EFFECT OF FEDERAL MINING FEES AND MINING POLICY CHANGES ON STATE AND LOCAL REVENUES AND THE MINING INDUSTRY

OVERSIGHT FIELD HEARING

BEFORE THE

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OF THE

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C O N T E N T S

EFFECT OF FEDERAL MINING FEES AND MINING POLICY CHANGES ON STATE AND LOCAL REVENUES AND THE MINING INDUSTRY

Friday, April 20, 2001
U.S. House of Representatives
Subcommittee on Energy and Mineral Resources
Committee on Resources
Reno, Nevada

The Subcommittee met, pursuant to call, at 12:30 p.m., at the Washoe County Commission Chambers, 1001 East 9th Street, Building A, Reno, Nevada, Honorable Jim Gibbons presiding.

Chairman GIBBONS. First of all, I want to start by welcoming everybody here to this hearing. It is the Subcommittee on Energy and Mineral Resources which is a Subcommittee of the Resource Committee of the United States House of Representatives.

I am Congressman Jim Gibbons. Most of the Committee members who were supposed to be here failed to show because of delayed flights, which I think many of us can understand, or because of work schedules in their own districts during this period which prevented them from attending this hearing, so I have the privilege and the honor to be the only Congressman on the Committee that is attending this meeting today so that we can get the hearing going.

The gentleman that you see up here sitting with me to my left is Jack Victory. He is my Legislative Director. To my far right is John Rishel and Bill Condit, both staffers from the Subcommittee on Energy and Mineral Resources. They will be, of course, here to help us.

We have Margaret Black over here from our Washington office as well to help usher the witnesses to the table and make sure their testimony is kept and recorded. Also I want to welcome our stenographer who has agreed to sit patiently through 3 hours of hearings without taking a break. She guarantees me that her fingers will last long enough to take 3 hours, and we are going to put her to the test. Of course, we certainly appreciate that.

Today's hearing is going to have four separate panels. Hopefully we will be able to have time at the end for public comment and we are trying to set up some time constraints now on the witnesses that are going to be in the panels to testify. We have given each panel about 20 minutes, hopefully it won't take that long.

Each person on the panel will have about 5 minutes to present their testimony, and what we have done to accommodate that, the technology of our red light, yellow light, green light, which we use so faithfully, has failed us. For some reason the technology or the electricity, maybe it is California taking the energy away from us, for our little timing lights which give us the hint that your 5 minutes is about up.

So when we fall back from our high tech electrical side of this we have fallen back to the good old fashion egg timer which we will set for 5 minutes, so when the bell goes off you know that you have reached your limit or we would appreciate you winding up your testimony.

Also, let me say that everybody who is present here and anyone who is not present here has an option of submitting written testimony for the record. We will keep the record open for ten business days after the date of this hearing. We will have the address available for you so that you can submit your written remarks in full to the Committee for the record.

Provided that we get through all four panels, we will open the mike up for individuals. In this case because there is so many people in the room and we do not know how many people will want to testify, we have just two requests. First of all, that you provide us with your name and address so that we know who is at the mike testifying and so that the reporter can properly identify you as well.

And, secondly, we would request that you try to keep your remarks down to 1 minute so that if we have the time we can get through as many people who want to submit written testimony as well.

With that, let me welcome all of you. Those of you that are here from out of state and those of you that are from within the state, we welcome you to our hearing today. And what I'm going to do is give my little opening remarks and then we will open it up and call the first panel which we will have seated at the microphones here.

But many of us know and those of you who do not know that Nevada is the largest gold producing state in the country. It is the third largest gold producing, or gold producer in the world, so if Nevada were a nation in terms of gold producing it would be the third largest nation in the world in terms of its production of gold.

It is my honor and it is definitely a privilege of mine to welcome and thank you for taking the time out of your busy day and especially for the elected officials here as well to share your thoughts and to come before our Committee and discuss with us your issues with regard to mining. Hopefully today we will hear important testimony on the effect of the new 3809 amendments to the regulations on mining and the millsite opinion that were put in place in the last couple of years under Solicitor Leshy, the United States Department of the Interior.

We will also discuss the effect of a proposed Federal royalty on mining and the effect of mining claim fees on domestic mineral exploration. Let me also state that Nevada is the state that is probably the most affected by any of these changes to the regulations

of any state because of the importance of mining in the State of Nevada to the citizens and people in this nation.

Our concern is whether or not these administrative changes to the regulations bypass the intent of Congress. Congress under the Constitution has the authority to set all laws and regulations which deal with the various territories and states. And as you know from your study of civics, Congress passes the laws and the administration enforces the laws.

Too many times we have found that the administration in an effort to achieve a goal has bypassed Congress creating its own "laws." As we know, regulations have the force and effect of law as they are created by agencies, so we want to make sure that these regulatory changes that were proposed comport with the intent of Congress and not bypass or sidestep Congress.

We are interested in how these Federal policies and fees affect our nation's domestic mineral exploration production and reserves as well as state and local revenues. Mining is a basic economic activity and it is necessary to all mankind. The knowledge and the use of metals is exceedingly important to human civilization.

I think historically, if we all look back, as man progressed out of the Stone Age mining became one of the central factors in the evolution of civilization in the world. And for the next 2,500 years following the Stone Age, historians characterize the advance of civilization by Man's increased ability in working with metals. Subsequent periods of this advance are divided into the Copper Age, Bronze Age and Iron Age.

Now, let me tell you that as a former mining geologist and Vice Chairman of this Subcommittee and Co-Chairman of the Energy & Mineral Resource Mining Caucus in Congress, I have a deep appreciation and understanding of Nevada's mining industry. Nevada, the nation's leading gold producer, as I said earlier, has about 30 operating gold producing companies that employ around 12,000 people. As you can tell, it is an important industry in this state.

Nevada alone provides an annual direct and indirect contribution to the Federal Government of more than 113 million dollars in revenue and fees. As the second largest employer of the state let me say that it has an even more dramatic impact. It provides 1.5 billion dollars in personal business, state and local government revenues in the State of Nevada.

And I think these numbers make it easy to understand why mining is such an important part of the State of Nevada. Around the globe mining continues to be a basic economic activity which supplies strategic metals and minerals that are essential for modern agriculture, construction and manufacture.

A recent study by the National Research Council concluded that one of the primary advantages the United States possesses over its strongest industrial competitors such as Japan and Western Europe is its domestic resource base, and domestic mining provides about 50 percent of the metals used by U.S. manufacturing companies.

The United States is among the world's largest producers of many important metals and minerals, particularly copper, gold, lead, molybdenum, silver and zinc and still has substantial domestic reserves of these metals.

Ladies and gentlemen, 12 western states in the United States contain more than 92 percent of the U.S. public land. These 12 states account for 75 percent of the U.S. Domestic metal production. Thus, much of the United States future metal supply will likely, of course, be found on government owned, government managed property in the western part of the United States.

Unfortunately, there are some who have used rhetoric portraying everything about the mining industry in its worst possible light while failing to acknowledge that mining provides any substantial benefits to society. And let me say that I believe that in the past mining has earned some criticism. Mining has also earned some accolades for what it has done and achieved over the last few years in terms of advancements in its environmental interests. Without mining and the knowledge of how to use metals we would still be living, of course, as I said earlier, in the stone age.

As someone who has spent some time in the military, let me turn now historically to talk about World War II, because World War II has been termed "a war of copper mines and steel mills." Using these raw materials produced by miners, American industry was able to produce enough war material for itself and the allies during that war, and America became known as "the arsenal of democracy" in large part because the mining industry was able to produce raw materials in record amounts.

Much of the environmental damage from mining was done during this time when our ability to produce energy and metals for the war effort would determine the future of this nation as a free nation, and I think everyone would agree that that war was worth winning. Today there are those who seem to think that it does not matter if we import all of the metals and minerals used by America, but I am concerned about our nation's increased reliance on imports for critical and strategic metals and minerals.

In recent years the United States has changed from a net exporter to a net importer for copper, lead, magnesium, silver, and rare earths. The last thing I want to see is for this nation to become dependent upon foreign sources of minerals and metals to the same degree it is dependent today on foreign sources of oil.

That would control our economy. It would control the strategic balance of power that this country now enjoys. I am sure everyone here knows this Congressional District, the Second Congressional District of Nevada encompasses some of the most important mining areas in the United States. In addition to the precious metals that we have and know about, mining constitutes the majority of the economic activity in north central and northeastern parts of Nevada.

One of the reasons why the Committee selected Reno for this hearing is because Nevada is an important public lands mining state with 87 to 90 percent of the land managed by the Federal Government and mining accounting for approximately 9 percent of the State's gross product.

Consequently, any detrimental effect of mining or Federal mining policy are going to have serious consequences to the mining industry and to the livelihoods of families all across this great state. There are those who believe that mining does not matter in this new age. They think that the future of mankind can be secured

without basic material resources and they think that if they produce words and ideas in the "information age," then nothing else is necessary.

Well, I'm here to tell you that that is a wrong approach. Mining matters to everyone. Mining makes our civilization. It makes the advancements that every one of us enjoy in medical care and medicines. It makes the standard of living that we have today possible. Everything and everyone in this room, everything that you do and use today probably comes from a mine somewhere.

Today we will examine proposed Federal policies on mining and government lands and hopefully what we will learn will help us find out what the consequences of these policies will be and what consequences these policies will have on those who invest their capital toward finding mineral deposits and developing mines.

And there is an old saying out there, I think many of us who have been in the industry know that if it isn't grown it has to be mined. Senators Reid and Ensign have been great champions of the mining industry and have expressed great interest in the information that will be provided in today's testimony. Unfortunately, neither of them could be here today because of their schedule.

[The prepared statement of Mr. Gibbons follows:]

Statement of The Honorable Jim Gibbons, a Representative in Congress from the State of Nevada

Welcome to Nevada, the largest gold producing state in the Country and the third largest gold producer in the world. It is my honor and pleasure to welcome and thank you for taking time out of your busy schedules to share your thoughts on mining with this Committee.

Today we will hear important testimony on the effect of the new 3809 rule and the millsite opinion on mining, the effect of a proposed Federal royalty on mining and the effect of claim fees on domestic mineral exploration. We are interested in how these Federal policies and fees affect our nation's domestic mineral exploration, production and reserves, as well as state and local revenues.

Mining is a basic economic activity necessary to mankind. The knowledge and use of metals is exceedingly important to human civilization. Early man's progress out of the Stone age, his most primitive period of tool-making, began when man first learned to use metal. Man's subsequent technological advancement for the next 2500 years is characterized by his increasing ability to work and use metals.

As a former mining geologist and Co–Chairman of the Subcommittee on Energy and Mineral Resources and the Congressional Mining Caucus, I have a deep appreciation and understanding of Nevada's mining industry. Nevada, the nation's leader in gold production, has about 30 operating gold producing companies that employ around 12,000 people. Nevada alone provides an annual direct contribution to the Federal Government of more than $113 million. As the second largest employer in the State, mining provides $1.5 billion in personal, business, and state and local government revenues. These numbers make it easy to realize why mining is such an important part of Nevada.

Around the globe, mining continues to be a basic economic activity which supplies strategic metals and minerals that are essential for modern agriculture, construction and manufacturing. A recent study by the National Research Council concluded that one of the primary advantages that the United States possesses over its strongest industrial competitors, Japan and western Europe, is its domestic resource base. The domestic mining industry provides about 50 percent of the metal used by U.S. manufacturing companies. The United States is among the world's largest producers of many important metals and minerals, particularly copper, gold, lead, molybdenum, silver and zinc and still has substantial domestic reserves of these metals.

Twelve western states, containing more than 92 percent of U.S. public land, account for nearly 75 percent of U.S. domestic metal production. Thus, much of the United States future mineral supply will likely be found on government-owned land in the West.

I have a problem with the rhetoric used by some to portray everything about the mining industry in the worst light possible while failing to acknowledge that mining

provides substantial benefits to society. Without mining and the knowledge of how to use metals, we would still be living in the Stone age.

World War II has been termed a war of "copper mines and steel mills." Using the raw materials produced by miners, American industry was able to produce enough war material for itself and our allies. America became the "arsenal of democracy" in large part because the mining industry was able to produce raw materials in record amounts. Much of the environmental damage from mining was done during this time when our ability to produce energy and metals for the war effort would determine our future as a free nation. I think everyone would agree, this was a war worth winning.

Today there are those who seem to think that it doesn't matter if we import all of the metals used by Americans. I am concerned about our nation's increasing reliance on imports for critical and strategic metals and minerals. In recent years, the United States has changed from a net exporter to a net importer of copper, lead, magnesium, silver and rare earths. The last thing I want to see is this nation becoming dependent on foreign sources of minerals and metals to the same degree it has become dependent on foreign sources of oil.

As I'm sure everyone here knows, this Congressional district which I represent in Congress, encompasses some of the most important mining areas in the United States. In addition, precious metals mining constitutes the majority of economic activity in the north central and northeastern parts of Nevada.

One of the reasons why the Committee selected Reno for this hearing is because Nevada is an important public lands mining state, with 87 to 90 percent of Nevada's lands owned by the Federal Government and mining accounting for approximately 9 percent of the Gross State Product. Consequently, any detrimental effects of Federal mining policy are going to have serious consequences to the mining industry and to the livelihoods of families across this great State.

Some seem to believe that mining doesn't matter in this new age. They think that the future of mankind can be secured without basic material resources. They think that if they produce words and ideas in the "information age" then nothing else is necessary. They are wrong.

Mining matters to everyone. Mining makes our civilization, it makes the advancements in medical care and medicine and it makes our high living standards possible. Everything you will use today began in a mine. Everything you do today depends on mining.

Today we will examine existing and proposed Federal policies on mining on government-owned lands. Hopefully, what we learn today will help us find out the consequences that some of these policies have had or will have on those who invest their capital toward finding mineral deposits and developing mines.

Remember if it isn't grown, it has to be mined!

Senators Reid and Ensign have also been great champions of the mining industry and have expressed great interest in the information that will be provided in today's testimony. Unfortunately neither of them could be here today, but they will be submitting testimony for the record.

With that it is time to begin. Will the first panel please be seated.

Chairman GIBBONS. I have a letter from State Senator Dean Rhoads with his testimony. He represents the Northern Nevada Senatorial District. He is a resident of Tuscarora, which for those of you who don't know the geography in Nevada, is just outside of Elko. He has submitted written testimony and without objection the Committee will accept the testimony of State Senator Dean Rhoads into the record.

[The prepared statement of State Senator Dean Rhoads and the newspaper article "Clinton Regulations a Threat to Mining" submitted for the record follow:]

Testimony of
Nevada State Senator Dean Rhoads

Field Hearing
U.S. House of Representative
Committee on Natural Resources
Subcommittee on Energy and Mineral Resource
April 20, 2001

Thank you Mr. Chairman, I am Dean Rhoads and I represent the Northern Nevada Senatorial District. I am also the Chairman of the Natural Resources and Public Lands Committees. Mining is often a focal point of the work I do in the legislature, and I appreciate your continued attention to mining issues.

I am fortunate to live in and represent one of the world's most prosperous gold mining regions. In fact, nearly 8.6 million ounces of gold were produced last year in the vast area surrounding my hometown of Tuscarora.

The mining companies that operate in Nevada work diligently to provide their employees a high standard of living. They strive to build communities where their children receive quality educations and where their families are safe. They also work to be profitable enterprises that are responsible steward of the state's public and private lands.

Nevada mining is not void of fault. As a legislator, I have worked hard to put in place laws that have created a close and productive relationship with the mines and their regulators. When issues arise, the state and the industry can work together--quickly—to address those issues. A good example of the proactive relationship between the industry and its regulators is in regard to reclamation bonding. Over the past several months, Nevada mining and the state have worked to make significant improvements to our bonding program to help safeguard against unexpected bankruptcies. In addition, an emergency fund has been created to help prepare for mine closures.

Nevada mining continues to face greater hurdles to being profitable. The price of gold is low and the cost of doing business is increasing. The recent surge in energy costs has significantly narrowed the profit margin and in some cases caused lay-offs.

The debates over the federal surface management regulations (3809) have also caused great strain on Nevada's mining industry. The previous administration spent several years debating over and developing regulations that were shown to be mostly unnecessary by the states, the National Academy of Sciences, and

Congress. Nevada's mining industry and the state are open to changes and improvements in our regulatory system. These changes, however, need to be based on sound science. I am pleased that President Bush is working to fix the mistakes that have been made regarding 3809. And, I appreciate your support on this issue.

Exploration for new ore bodies is essential for the future survival of mining. However, exploration has significantly dropped in Nevada due largely to uncertainty about federal mining regulations and law. Since 1993, mining claims have dropped in half.

Mining is an essential part of Nevada's economy, especially in rural Nevada. I am thankful that you have taken the time to focus on this important issue. As always I am happy to work with you in any way I can as you continue addressing mining in Nevada.

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SECTION C SATURDAY, APRIL 21, 2001 RENO GAZETTE-JOURNAL/RGJ.COM

Clinton regulations a threat to mining

By Martin Griffith
ASSOCIATED PRESS

Mining exploration dollars are flooding out of the United States, and rural counties are bracing for economic hardship because of regulations adopted under former President Clinton, a congressional panel was told Friday.

Industry representatives joined local and state officials in urging the House Subcommittee on Energy and Mineral Resources to support lifting the regulations.

They said the so-called "3809" regulations issued on the final day of the Clinton presidency have caused companies to accelerate their explorations abroad.

About 150 people attended the hearing chaired by Rep. Jim Gibbons, R-Nev., who said he would recommend scrapping the so-called "mine veto" provision strongly opposed by the industry.

Gibbons, who is vice chairman of the subcommittee, said the provision

See **MINING** on **5C**

Mining/Environmental group backs rules

From **1C**

gives the Bureau of Land Management broad, discretionary power to prohibit new mines on public land, and has introduced a new element of risk to companies.

"We're only now beginning to see the financial impacts of the regulations and it's only going to get worse if something isn't done," said Gibbons, a former mining geologist and a co-chairman of the Congressional Mining Caucus.

"It'll have a ripple effect on the economy because everybody depends on the mineral industry. The mineral industry is the cornerstone of the American economy."

But Tom Myers, director of the Great Basin Mine Watch environmental group, defended the regulations. He said they're essential for protecting the environment and taxpayers.

Myers said the mine veto provision will lead to only rare denials, and recent developments will discourage mining companies from heading overseas.

He noted that political uncertainty has caused Newmont Gold Co. to stop exploring in Indonesia and other companies to have second thoughts about South Africa.

Elko County Commission Chairman Nolan Lloyd said the effects of the decline in exploration activity already are being felt in his county. The county faces a $1.6 million budget shortage as well as cuts in service and jobs.

"Although production of gold has stayed about the same in our area, it is known that as exploration is reduced, a reduction in production will follow in four to six years," said Lloyd, manager of a mining exploration company. "So if the trend continues, the worst is yet to come."

Charles A. Jeannes, senior vice president of Reno-based Glamis Gold Ltd., said his company is devoting its exploration dollars to Mexico and Central America because of the mine veto provision.

He said his company's Imperial mine in southern California was blocked under similar standards imposed by former Interior Secretary Bruce Babbitt. The company invested $15 million in the project.

"Under this provision, you can meet all the environmental laws and still be out of luck," he said. "It's the lack of certainty caused by this that's leading to a flight out of the United States."

In a statement, Nevada Gov. Kenny Guinn said the Silver State has experienced a sharp drop in exploration as evidenced by a decrease in active mining claims from nearly 450,000 in 1991 to 105,000 last year.

Nevada is the largest gold producer in the nation and the third-largest in the world behind South Africa and Australia.

"This translates into a $45 million reduction in exploration activity per year," Guinn said. "I am deeply concerned about the economic future of many of our rural communities because of their heavy dependence on mining."

The mining industry provided 11,000 jobs last year, down 4,000 jobs from 1997.

The BLM has estimated the new 3809 regulations will cost Nevada as many as 3,220 jobs and $249 million in total personal income.

Last month, the BLM announced it would seek to suspend the new rules while seeking public comment. Current rules will remain in place until a new rule is published, expected to be in July.

Chairman GIBBONS. With that it is time for the first panel. Let me invite the first panel up. It will be Mr. Alan Coyner, Administrator of the Nevada Division of Minerals testifying on behalf of Governor Kenny Guinn; Mr. Nolan Lloyd, Chairman of the Elko County Commissioners; and Mr. John Milton, III, Humboldt County Commissioner.

While those gentlemen are being seated, let me recognize Jeremy Shields. Jeremy, if you will stand up, this is Senator Reid's office staff who has come to attend the hearing. We appreciate you being here, Jeremy. Thank you very much.

Gentlemen, I don't know who has decided to go first. I would suggest we just go down the line with Mr. Coyner, then Mr. Lloyd and Mr. Milton, and let me welcome you to our hearing today. And of course Margaret has the egg timer going and so when you start she will start the timer and we would open it now for your testimony. Welcome and thank you for taking the time out to be here today. Gentlemen.

STATEMENT OF ALAN COYNER, ADMINISTRATOR, NEVADA DIVISION OF MINERALS

Mr. COYNER. Thank you, Congressman Gibbons. It is indeed an honor and a privilege to be here today and give the testimony of our Governor Kenny C. Guinn. Mr. Chairman, I appreciate the opportunity to testify today regarding the effect of Federal mining fees and mining policy changes on state and local revenues and the mining industry.

It is indeed appropriate and very timely that this hearing be held in Nevada, the nation's leading producer of hardrock minerals. We lead the United States in gold and silver production, as well as barite, magnesite and several other mineral commodities.

Mining is our second largest industry, providing with direct and indirect effects from seven to almost 9 percent of my state's gross product. Nevada was founded on mining with the discovery of the Comstock Silver Lode near Virginia City in 1859. That discovery began the settlement of Nevada and played a major role in the admission of Nevada into the Union in 1864.

Many of our communities came into the existence because of mining, including such towns as Tonopah, Eureka, Ely and Carlin. And on this point, Mr. Chairman, let me be perfectly clear, mining has made and continues to make a significant contribution to the history of economic development of Nevada.

It is for this reason that Nevada is highly concerned about any proposed changes in Federal mining fees or mining policy that would negatively impact our state, local communities, and mining industry. As you might expect, our concern is heightened by the fact that over 87 percent of the land within our state is managed by Federal agencies charged with administrating these fees and policies.

To be completely frank, Mr. Chairman, I am deeply concerned about the economic future of many of our rural communities because of their heavy dependence on mining. In the year 2000, Nevada's mining industry provided approximately 11,000 jobs, an update to your number, Mr. Chairman, directly related to mining, mostly in those rural communities.

The average pay for those jobs was nearly $58,000 per year, the highest average of any employment sector in our state. In addition, we estimate another 36,000 jobs were generated in these communities to provide the goods and services needed by the direct jobs supplied by the mining industry.

However, in the last 4 years nearly 4,000 direct jobs have been lost. When you consider that only 200,000 of our 1.9 million citizens live in rural Nevada, the magnitude of the economic impact of this 25 percent reduction in employment becomes clear.

Our concern also extends to another important segment of our mining industry, which is the exploration for new mineral resources. Exploration is the lifeblood that sustains the mining economy of Nevada. Without exploration the jobs and economic vitality of rural Nevada are threatened. Nevada is truly blessed with an incredible mineral endowment, however, the new wealth represented by this endowment can only be realized through the efforts of the mineral industry and private enterprise.

We also recognize a major portion of this resource is located on public lands, and I believe Nevada can work with our Federal partners and the mineral industry to responsibly develop these resources. But in fact Nevada has experienced a significant reduction in exploration activity as evidenced by the decrease in the number of active mining claims from nearly 450,000 in 1991 to 105,000 in 2000.

This translates into a 45 million dollar reduction in exploration activity per year. And other indicators, such as the closure of mineral exploration offices and decreases in drilling activity, for example, indicate the total annual loss is more probably in the hundreds of millions of dollars. For this reason, we in Nevada can only support any changes in mining fees or policies which would result in a reversal of this trend and an increase in exploration activity.

I would like to make some brief remarks about the lawsuit filed by the State of Nevada against the United States Department of the Interior and the Bureau of Land Management concerning the 3809 mining regulations. The State of Nevada has been, and continues to be, deeply committed to effective, efficient, environmentally sound mining regulation.

I believe Nevada is one of the most environmentally responsible mining regions in the world. We closely monitored BLM's efforts to rewrite the 3809 regulations and commented extensively during the lengthy development and review process.

Nevada repeatedly questioned the need for extensive reform of the existing regulations and supported the findings of the National Research Council of the National Academy of Sciences that only selective regulatory reform was needed, combined with enhanced utilization of existing authority. Nevada recognized the revised regulations published on November 21, 2000 threatened to bring great and undue economic hardship to the state, along with major disruption of the state-Federal relationship critical to effective environmental protection.

By the BLM's own estimates, the 3809 regulations would result in the loss of up to 3,200 jobs and the value of industry output reduced by $181 million to $543 million, with Nevada citizens losing between $83 million and $249 million in total personal income.

When it became clear that the administrative process had failed, Nevada was forced to resort to legal action. And while the outcome of the legal process is yet to be determined, we have recommended that the BLM suspend the new revised regulations and reinstate the rules that were in place on January 19th, 2001. Once the previous version is reinstated, the State of Nevada would be pleased to work with the BLM and other stakeholders to develop selective modifications to the 3809 regulations to address only the NRC recommendations.

Finally, I have stated in previous hearings of this Subcommittee, and continue to believe, that reasonable mining fees and policies would benefit all stakeholders, including the states, Federal Government, and industry. Changes to the mining claim fees which would enhance opportunities for the Nevada prospector will be welcomed.

Selective reform of the 3809 regulations which would put in place a regulatory system which works in concert with state, local and other Federal agencies to protect against unnecessary or undue degradation of the public lands will receive our support.

Please remember, however, Nevada's past and Nevada's future are inextricably entwined with mining. Nevada will only support changes to Federal fees and policies as long as they have a benefit and are consistent with our goals and objectives, most notably to have a strong, well regulated, environmentally sound mining industry. Thank you.

Chairman GIBBONS. Thank you very much, Mr. Coyner.

[The prepared statement of Governor Guinn follows:]

Statement of Hon. Kenny C. Guinn, Governor, State of Nevada

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to testify today regarding the effect of Federal mining fees and mining policy changes on State and local revenues and the mining industry. It is indeed entirely appropriate, and very timely, that this hearing be held in Nevada, the nation's leading producer of hard rock minerals. We lead the United States in gold and silver production, as well as barite, magnesite, and several other mineral commodities. Mining is our second largest industry, providing with direct and indirect effects nearly 7% of my state's gross product. Nevada was founded on mining with the discovery of the Comstock Silver Lode near Virginia City in 1859. That discovery began the settlement of Nevada, and played a major role in the admission of Nevada to the Union in 1864. Many of our communities came into existence because of mining, including such towns as Tonopah, Eureka, Ely, and Carlin. On this point, Mr. Chairman, let me be perfectly clear. Mining has made, and continues to make, a significant contribution to the history and economic development of Nevada.

It is for this reason that Nevada is highly concerned about any proposed changes in Federal mining fees or mining policy that would negatively impact our state, local communities, and mining industry. As you might expect, our concerned is heightened by the fact that over 87% of the land within our State is managed by Federal agencies charged with administrating these fees and policies. To be completely frank, Mr. Chairman, I am deeply concerned about the economic future of many of our rural communities because of their heavy dependence on mining. In the year 2000, Nevada's mining industry provided approximately 11,000 jobs directly related to mining, mostly in those rural communities. The average pay for those jobs was nearly $58,000 per year, the highest average of any employment sector in our state. In addition, we estimate another 36,000 jobs were generated in these communities to provide the goods and services needed by the direct jobs supplied by the mining industry. However, in the last four years, nearly 4,000 direct jobs have been lost. When you consider that only 200,000 of our 1.9 million citizens live in rural Nevada, the magnitude of the economic impact of this 25% reduction in employment becomes clear.

Our concern also extends to another important segment of our mining industry which is the exploration for new mineral resources. Exploration is the lifeblood that sustains the mining economy of Nevada. Without exploration the jobs and economic vitality of rural Nevada are threatened. Nevada is blessed with a truly incredible mineral endowment, however, the new wealth represented by this endowment can only be realized through the efforts of the mineral industry and private enterprise. We also recognize a major portion of this resource is located on public lands, and I believe Nevada can work with our Federal partners and the mineral industry to responsibly develop these resources. But in fact, Nevada has experienced a significant reduction in exploration activity as evidenced by the decrease in the number of active mining claims from nearly 450,000 in 1991 to 105,000 in 2000. This translates into a $45 million reduction in exploration activity per year. Other indicators, such as the closure of mineral exploration offices and decreases in drilling activity, indicate the total annual loss is more probably in the hundreds of millions of dollars. For this reason, we in Nevada can only support any changes in mining fees or policies which would result in a reversal of this trend and an increase in exploration activity.

I would like to make some brief remarks about the lawsuit filed by the State of Nevada against the United States Department of the Interior and the Bureau of Land Management concerning the 3809 mining regulations. The State of Nevada has been, and continues to be, deeply committed to effective, efficient, environmentally sound mining regulation. I believe Nevada is one of the most environmentally responsible mining regions in the world. We closely monitored BLM's efforts to rewrite the 3809 regulations and commented extensively during the lengthy development and review process. Nevada repeatedly questioned the need for extensive reform of the existing regulations and supported the findings of the National Research Council (NRC) of the National Academy of Sciences that only selective regulatory reform was needed, combined with enhanced utilization of existing authority. Nevada recognized the revised regulations published on November 21, 2000 threatened to bring great and undue economic hardship to the State, along with major disruption of the state-Federal relationship critical to effective environmental protection. By the BLM's own estimates, the new 3809 regulations would result in the loss of up to 3,220 jobs in Nevada, total industry output in Nevada would be reduced by $181 million to $543 million, and Nevada citizens would lose between $83 million and $249 million in total personal income. When it became clear the administrative process had failed, Nevada was forced to resort to legal action. While the outcome of the legal process is yet to be determined, we have recommended that the BLM suspend the new revised regulations and reinstate the rules that were in place on January 19, 2001. Once the previous version is reinstated, the State of Nevada would be pleased to work with BLM and other stakeholders to develop selective modifications to the 3809 regulations to address the NRC recommendations.

I have stated in previous hearings of this Subcommittee, and continue to believe, that reasonable mining fees and policies would benefit all stakeholders, including the states, Federal Government, and industry. Changes to the mining claim fees which would enhance opportunities for the Nevada prospector will be welcomed. Selective reform of the 3809 regulations which would put in place a regulatory system which works in concert with state, local and other Federal agencies to protect against unnecessary or undue degradation of the public lands will receive our support. Please remember, however, Nevada's past and Nevada's future are inextricably entwined with mining. Nevada will only support changes to Federal fees and policies as long as they have a benefit and are consistent with our goals and objectives, most notably to have a strong, well regulated, environmentally sound mining industry. Thank you.

Chairman GIBBONS. Mr. Lloyd.

STATEMENT OF NOLAN W. LLOYD, CHAIRMAN, ELKO COUNTY COMMISSION

Mr. LLOYD. Thank you, Congressman Gibbons, it is an honor to be here, and staff. I appreciate this opportunity of giving you testimony today on the impact of the new regulations to the economy of Elko County. I come to you as Chairman of the Elko County Commission and also as a manager of an exploration company

seriously impacted by these regulations. I have been employed in the mineral exploration business for the past 35 years.

The numbers I'm using, I see Mr. Coyner has updated them a little better, so I will change my numbers on the loss of claims and the effect it has had to our economies. As he mentioned, in the last several years there has been a drop of about 300,000 in mining claims in the State of Nevada. Prior to the implementation of the $100 holding fee, each claim holder was expected or required to do $100 worth of assessment work to each of their claims. This meant approximately 30 million dollars into the economy of Nevada.

These dollars were spent in local communities for drilling companies, surveying, assay, earthmoving contractors, and so forth, who did work for the claim holders. Time did not permit me to get the exact numbers for Elko County, but the numbers are very significant.

In addition to those dollars that were lost, the remaining millions of dollars went directly to the Federal Government and not to the local economy. This loss not only affects us today, but will continue to hamper future discovery and production by undiscovered deposits worth potentially millions. Although production of gold has stayed about the same in our area, it is known that when exploration is reduced a reduction in production will follow in about four to 6 years. So if the trend continues, the worst is yet to come.

The implementation of the new bonding requirements added another significant blow to the industry. I have personal knowledge how these regulations caused major impact to the exploration business.

In our business alone we have had to reduce our operations because of lack of work. Much of our exploration work was done for the assessment work. We have reduced from 12 operating rigs in the years prior to the new regulations to four operating rigs as of today and they are not operating as yet this year.

There are a number of exploration companies in our area who likewise have been affected. The direct and indirect impact is multiplied many times as it is estimated that money circulates through local communities three to four times.

The new 3809 regulations have further decreased the exploration dollars spent in Nevada. As we have contacted our clients this year concerning their drilling programs, the message we have received is that they do not plan to do much exploration work. I quote, "Why drill it if we can't mine it" is the comment that we have been universally told.

As reported in the Nevada Miner in February of 2001, Nevada was rated at the top for overall mining investment attractiveness by the Fraser Institute. This rating and attractiveness is being negatively impacted by the enormous amount of Federal regulation that has been imposed. This is supported by the Nevada Division of Minerals annual exploration survey, which shows that exploration spending in Nevada declined from 154 million in 1994 to 87 million dollars in 1999. I'm sure when the numbers are compiled for 2000 they will continue to decline.

It is no secret that mining companies are spending their exploration dollars in areas with a more favorable climate to the industry, i.e. out of the United States.

In conclusion, the full impact of these regulations may be difficult to delineate. They are real dollars and amount to billions of dollars lost to local and state economies. The losses are reflected in Elko County in many other areas such as fees to counties, housing, sales taxes, and the list goes on. Just 2 days ago there was a headline in the Elko Daily Free Press which read, "County permit fees drop 65 percent."

Where the rubber meets the road, so to speak, is evidenced in the dilemma of trying to balance the budget in Elko County. We are 1.6 million dollars short of balancing. That amounts to 9 percent of our general fund. Now, that doesn't sound like much money, but it is very significant to us. It will result in reduction of services and jobs in Elko County, which happens to be the fifth largest county in the United States with about 17,000 square miles of area.

I'm here today as a County Commissioner asking you to please consider the negative impact these regulations are having on local government and industry and to do all that you can to reverse the trend. Thank you.

Chairman GIBBONS. Thank you very much, Commissioner Lloyd.

[The prepared statement of Nolan Lloyd follows:]

Statement of Nolan Lloyd, Chairman, Elko County Commission, Elko County, Nevada

I appreciate this opportunity to give you my testimony of how the new regulations have impacted the economy of Elko county. I come to you as the chairman of the Elko County Commission and also as a manager of an exploration company seriously impacted by these regulations. I have been employed in the mineral exploration business for the past 35 years.

In 1994 approximately 400,000 of Nevada's 700,000 mining claims were dropped or abandoned as a result of the $100 per claim fee imposed by the Federal Government. Prior to the rental fee implementation, each unpatented mining claim in Nevada had to have $100 equivalent of assessment or due diligence work performed on it annually to hold it. The loss of 400,000 claims created a direct $40 million annual loss to the economies of Nevada. These dollars were spent in local communities for drilling companies, surveying, earth moving contractors, etc. who did work for the claim holders. Time did not permit me to obtain the exact numbers for Elko County but the numbers are very significant. In addition, there was $30 million given directly to the Federal Government in holding fees on the remaining approximately 300,000 claims, money that left the state. This loss not only effects us today, but will continue to hamper future discovery and production by undiscovered deposits worth potentially billions. Although production (of gold) has stayed about the same in our area, it is known that as exploration is reduced a reduction in production will follow in 4–6 years. So if the trend continues, the worst is yet to come!

The implementation of the new bonding requirements added another significant blow to the industry. I have personal knowledge how these regulations caused major impact to the exploration business. In our business alone we have had to reduce our operations because of the lack of work. Much of our exploration work was assessment work. We have reduce from 12 operating rigs in the years prior to the new regulations to 4 operating rigs as of today, and they are not operating as yet this year. There are a number of exploration companies in our area who have likewise been affected. The direct and indirect impact is multiplied many times as it is estimated the money circulates through the local economies 3 to 4 times.

The new 3809 regulations have further decreased the exploration dollars spent in Nevada. As we have contacted our clients this year concerning their drilling programs the message we have received is they do not plan on doing much exploration work, "Why drill it, if we cannot mine it?" is the comment we are told.

As reported in the Nevada Miner, February 2001, Nevada was rated at the top for overall mining investment attractiveness by the Fraser Institute. This rating and attractiveness is being negatively impacted by the enormous amount of Federal regulation that has been imposed. This is supported by the Nevada Division of Minerals annual exploration survey, which shows exploration spending in Nevada declining from $154 million in 1994 to $87 million in 1999. I am sure when the

numbers are compiled for 2000 they will continue to decline. It is no secret that mining companies are spending their exploration dollars in areas with a more favorable climate to the industry, i.e. out of the United States.

In conclusion, the full impact of these regulations may be difficult to delineate. They are real dollars and amount to millions of dollars lost to local and state economies. These losses are reflected in Elko County in many other areas such as fees to counties, housing, sales taxes and the list goes on. Just two days ago there was a headline in the Elko Daily Free Press which read, "County permit fees drop 65 percent."

Where the rubber meets the road, so to speak, is evidenced in the dilemma of trying to balance the budget in Elko county. We are $1.6 million short of balancing. That amounts to about 9% of our general fund. Now that doesn't sound like a lot of money, but it is very significant to us. It will result in reduction of services and jobs in Elko County, which happens to be the 5th largest county in the U.S. with about 17,000 square miles of area. I am here today a County Commissioner asking you to please consider the negative impact these regulations are having on local government and industry and do all that you can to reverse the trend.

I thank you for the opportunity to present this testimony.

Chairman GIBBONS. Mr. Milton.

STATEMENT OF JOHN H. MILTON, III, HUMBOLDT COUNTY COMMISSIONER

Mr. MILTON. Thank you, Congressman Gibbons. Thank you for the opportunity to be here today. My name is John Milton. I'm a member of the Board of County Commissioners from Humboldt County, Nevada.

Humboldt County is located in the northwest portion of Nevada and comprises an area of approximately 10,000 square miles. Of those 10,000 square miles, about 80 percent is public land managed or controlled by the Bureau of Land Management, Forest Service or the U.S. Fish and Wildlife Service.

The economy of Humboldt County is primarily dominated by mining, followed closely by ranching and agriculture. The majority of the mining and the ranching actually takes place on the public land, so it is safe to say that the economy of Humboldt County is tied directly to the way the public land is regulated or controlled.

I was first elected in November of '92 and took office in '93. That was the year the Bureau of Land Management instituted the first major change in the mining law, the annual claim maintenance fee of $1,000, excuse me, $100 and the one time filing fee of $25 added to the cost of locating a mining claim. Prior to that time, the cost of filing a claim with the BLM was $10.

The claim maintenance fee had three effects on mining exploration in Nevada. First, it increased the cost to file a mining claim by 100, excuse me, 1250 percent. Second, it caused the exploration costs to increase, because prior to the maintenance fee that is assessed at the time of location and every year thereafter, it was only necessary to do $100 worth of exploration work each year in order to maintain the validity of a mining claim. Now an owner must pay the maintenance fee and do the exploration work to prove the viability of the claim.

And last, the maintenance fee has run the small mining operator out of the exploration business. Sure, there is an exemption for the holder of 10 claims or less, but the small independent miner

usually had numerous groups of claims that could number 100 or better. Now it is simply too expensive for those miners to operate.

To illustrate, in 1992 there were 3,400 claims located in Humboldt County. The year the regulations went into effect that number dropped to 1,100 and stayed about that through the year 2000, which there were only 884 claims located last year.

The two-thirds reduction of exploration in Humboldt County has resulted in a substantial loss of revenue to the county and loss of income to businesses that benefited from the exploration activities and in the long run the discovery of new mining sites has almost come to a halt.

Even more disturbing to Humboldt County would be the imposition of a Federal royalty on the production of minerals. A Federal royalty would reduce the amount of profit a mining company would make which would cause a reduction of the net proceeds of mine tax as levied against the mining profits and is shared by the state and county government.

It also could cause marginal mining operations to close during this period of depressed mineral prices. A great deal of capital is invested by a mining company to bring on line a mine that provides jobs for our citizens and taxes for the county before any income from operations is ever achieved. With the volatility of mineral prices in the last few years, the anticipation of payment of yet another fee or royalty could doom further exploration and close operating mines.

There is yet another problem that has the potential to destroy the economy of Humboldt County. Over the last few years, a series of events undertaken by the Bureau of Land Management, Forest Service, and Congress has caused great concern. It is the accumulated effort of increased regulation and the limiting of access to the public land.

As I stated before, Humboldt County's economy is tied directly to the public land. Through the implementation of proposed roadless areas in the forest, the new 3809 regulations on mining, grazing reform, BLM off-road regulations, and just recently the closure of mining and geothermal development of approximately a million acres of Humboldt County by the Black Rock NCA/Wilderness Bill passed in the last days of the Congress, Humboldt County is being pushed forward toward economic collapse.

For almost 150 years mining and ranching have been the primary industries for our county. Without the continued use of the public land, both of these industries will cease and Humboldt County will no longer have the growing and viable economy that we have had in the past. Congressman, I would like to thank you for the opportunity to be here today.

Chairman GIBBONS. Thank you very much, Commissioner Milton. We appreciate not only your testimony, but the testimony of your colleagues sitting there with you.

[The prepared statement of John Milton follows:]

Statement of John Milton, Commissioner, Board of County Commissioners, Humboldt County, Nevada

Chairman Cubin, members of the Committee, my name is John Milton and I am a member of the Board of County Commissioners from Humboldt County, Nevada.

Humboldt County is located in the northwest portion of Nevada and comprises an area of approximately 10,000 square miles which is larger than the States of Massachusetts and Rhode Island combined. Of those 10,000 square miles, about 80 percent is public land managed or controlled by the Bureau of Land Management, Forest Service, or the U.S. Fish and Wildlife Service. The economy of Humboldt County is primarily dominated by mining, followed closely by ranching and agriculture. The majority of the mining and ranching actually takes place on the public land. So it is safe to say that the economy of Humboldt County is tied directly to the way the public land is regulated or controlled.

I was first elected in November of 1992 and took office in January 1993. That was the year the Bureau of Land Management instituted the first major change in the mining law — the annual claim maintenance fee of $100 and the one-time filing fee of $25 added to the cost of locating a mining claim. Prior to that time, the cost of filing a claim with the BLM was $10. The claim maintenance fee had three effects on mining exploration in Nevada. First, it increased the cost to file a mining claim with the BLM by 1250 percent. Second, it caused the exploration costs to double because prior to the maintenance fee, that is assessed at the time of location and every year thereafter, it was only necessary to do $100 worth of exploration work each year in order to maintain the validity of a mining claim. Now an owner must pay the maintenance fee and do exploration work to prove the viability of the claims. And last, the maintenance fee has run the small mining operator out of the exploration business. Sure, there is an exemption for the holder of 10 claims or less, but the small independent miner usually had numerous groups of claims that could number 100 or better. Now it is simply too expensive for those miners to operate. To illustrate, in 1992 almost 3400 claims were located in Humboldt County. In 1993 only 1100 were located, in 1994 and 1995 about 1200 claims were located, and in 2000, the last year of complete records, only a total of 884 claims were located. This 2/3 reduction of exploration in Humboldt County has resulted in a substantial loss of revenue to the county and loss of income to business that benefited from the exploration activities and in the long run the discovery of new mining sites has almost come to a halt.

Even more disturbing to Humboldt County would be the imposition of a Federal royalty on the production of minerals. A Federal royalty would reduce the amount of profit a mining company would make which would cause a reduction of the net proceeds of mines tax that is levied against mining company profits and is shared by the state and county governments. It could also cause marginal mining operations to close during this period of depressed mineral prices. A great deal of capital is invested by a mining company to bring on line a mine that provides jobs for our citizens and taxes for the county before any income from operations is achieved. With the volatility of mineral prices in the last few years, the anticipation of payment of yet another fee or royalty could doom further exploration and close operating mines.

There is yet another problem that has the potential to destroy the economy of Humboldt County. Over the last few years, a series of events undertaken by the Bureau of Land Management, the Forest Service, and Congress has caused great concern. It is the accumulated effect of increased regulation and the limiting of access to the public land. As I stated before, Humboldt County's economy is directly tied to the public land. Through the implementation of proposed roadless areas in the national forest, new 3809 regulations on mining, grazing reform, BLM off-road regulations, and just recently the closure to mining and geothermal development of approximately a million acres of Humboldt County by the Black Rock NCA/Wilderness Bill passed in the last days of the last Congress, Humboldt County is being pushed toward economic collapse.

For almost 150 years mining and ranching have been the primary industries for our county. Without the continued use of the public land, both of these industries will cease and Humboldt County will no longer have the growing and viable economy that we have had in the past.

Thank you for allowing me this opportunity to address your Committee.

SUMMARY OF TESTIMONY

The economy of Humboldt County, located in northwest Nevada, is dominated by mining, ranching, and agriculture, and is directly tied to the way the public land is regulated and controlled. Changes in the Federal mining law have significantly increased the cost to file claims and doubled exploration costs which has forced small independent miners out of business. Mining exploration in Humboldt County has been reduced by two thirds since the inception of these changes to the Federal mining law. This has resulted in a substantial loss of revenue to the county and business owners and has significantly depressed the local economy. The imposition

of a Federal royalty on the production of minerals could cause additional closures of mining operations in Humboldt County.

Recent actions taken by the Bureau of Land Management, the Forest Service, and Congress have caused great concern because of their potential to destroy the economy of Humboldt County. Implementation of proposed roadless areas in the national forest, new 3809 regulations on mining, grazing reform, BLM off-road regulations, and the closure to mining and geothermal development of approximately 1 million acres in Humboldt County by the Black Rock NCA/Wilderness Bill are pushing Humboldt County toward economic collapse.

Chairman GIBBONS. What I would like to do is just perhaps ask a couple of questions of each of you and hopefully get a little more information for this Committee. Let me start with Mr. Coyner.

Now, the Bureau of Land Management initiated the revisions to 3809 and according to the Bureau of Land Management those regulations were developed in cooperation with the State. Since Nevada may well be one of the most important mining states in the union, one would assume they solicited a great deal of input from the State of Nevada with regard to these proposed modifications and changes from the State of Nevada.

You have been in this job for a couple of years now, I would assume. How would you assess their interaction with the State of Nevada with regard to soliciting your input with regard to these suggested changes that came out in the last year?

Mr. COYNER. Congressman Gibbons, speaking as the Administrator of the Division of Minerals rather than on behalf of the Governor, I am aware of numerous sessions that took place, both between the BLM and representatives of the states through the Western Governor's Association. I think our active participation was in place; however, again, the position that we would take both from my perspective as Administrator and I believe the State perspective is that the comments that were offered to those revisions were largely ignored or not listened to by the BLM as part of the process.

I also might state that when the regulations were ultimately published there were sections within the regulations that the states had never seen prior to them being published. In fact, that is one of the key points with regards to the lawsuit that the State of Nevada has taken against the Department of the Interior and the BLM, this inconsistency with the process. NEPA and APA should have put them in a position to suggest those changes and allow us to interact with them about them.

Chairman GIBBONS. Thank you. Let me ask a general question to both Commissioners as we begin here. The importance of mining which both of you have stated, and in fact all three of you have stated, with regard to not just your county but the State of Nevada is critical, and I would like you just to summarize some of the impacts that it would have on Elko County and Humboldt County. In general if mining were to fall into decline to the point where we would see a 25 percent reduction in the mining we have today in your counties, what impact say would a decline down to that level have on your county, its infrastructure? Whether it is schools, hospitals, highways, roads, let me just throw that question out there and see if you can give us some sort of an estimate of the impacts that would have on your counties. Mr. Lloyd, start with you.

Mr. LLOYD. We are in a unique situation in Elko County. We are impacted more so, perhaps. We are right next to Eureka County and most of the large mines are in Eureka County, so the revenues from the mines go there, particularly net proceeds are going to another county and we are impacted because most of the workers live in Elko County. So we are struggling to start with, because we don't have a lot of the revenue to compensate for the number of employees that live in our county.

If there is a 25 percent reduction, I guess our statement is; as many bills in the state have recently impacted the county, come and get the courthouse, here are the keys to it. We would no longer be able to operate.

It is going to be difficult this year and the next. We predict the future, as we foresee the future in budgeting Elko County, suggested revenues are going to be down significantly.

We have grave numbers now from the real estate community. We have about 400 homes on the market in Elko County. We had the huge boom in the later 80's and up through the middle of the 90's, and, most of the people that were employed by the mines came to Elko County and lived in the Elko area.

So now we have the great reduction in employment. I had a manager from one of the local mines sit in my office here last week and announced that they are going to cut 2 percent back on their employees. And we continue to get this. We have had a decline in assessed value in our county last year of between 60 and 70 million dollars. This is a direct result of the regulations that have been imposed, so another 25 percent we would be out of business.

Chairman GIBBONS. Thank you. Commissioner Milton.

Mr. MILTON. I would echo Commissioner Lloyd's same statement. We would be out of business, too. In Humboldt County in the last 5 years the mining employment has dropped almost 50 percent based primarily on the prices of gold. Our net proceeds have gone from about $800,000 down to $20,000. The school district is presently laying off 70 employees to help balance the budget there.

We don't have 400 homes, but we have got over 200 homes that are vacant and people have walked away from them, and likewise we have experienced about a 35 million dollar decrease in net valuation of the county.

A further 25 percent reduction would probably mean that the two major mining companies would, one or both of the mines would probably have to close to have that much of a reduction, so it would be devastating to Humboldt County.

Chairman GIBBONS. Mr. Lloyd, you have been in the exploration business, you own a company.

Mr. LLOYD. I don't own it. I work for it. I'm glad I don't own it.

Chairman GIBBONS. You work for it. I was promoting you. The bonding regulations that you talked about in your testimony that you indicated have had a dramatic effect on the business, the exploration business, and I think you said going from 12 rigs down to four drilling rigs and of course that would mean a substantial number of employees are no longer working for your firm.

Those regulations which were put in place, were put in place by the previous Administration. What happened to those regulations? Do you recall how they were created, whether they were created,

were they taken to court to determine any validity of those regulations?

Mr. LLOYD. You know, I'm not sure of the details. They were strictly imposed by administrative order. There were no hearings on the issue, and these new regulations imposed huge bonding requirements on small areas of disturbance. It used to be a small exploration company could develop a mine site or exploration site and if it was less than five acres, it didn't have to go through the big bonding issues for the reclamation and all that is involved there.

Since that bonding required huge bonds for the smaller acreages again they quit exploring. People just declined to do it, they made it impossible for them to do it.

Chairman GIBBONS. Did our court system review those regulations?

Mr. LLOYD. There were some lawsuits imposed and I think they are still sitting there. I know some that you are familiar with. There was a bill to compensate some of those who have been affected by that and it is still out there. I know some firms who are still trying to anticipate litigation to see if there is some remuneration.

Chairman GIBBONS. Do you believe that the Federal Government should reimburse those companies for its illegal act? In other words—.

Mr. LLOYD. Well, actually it was proven in court that it was illegal, that it was imposed illegally, so by virtue of that illegal act we certainly believe that some compensation is due. My employer is one who is pursuing some litigation to get some remuneration for that.

You know, we are basically hanging on to stay in business and I think by an illegal act of the government certainly they ought to be held accountable for a reduction in our business. We are a relatively small exploration company in Elko. We have some large ones there, but in our small company we are talking roughly a million dollars reduction in salaries and that is turned over three or four times. You have three or four million dollars in a smaller community that is turned over, and that is significant dollars.

Chairman GIBBONS. Let me ask both Commissioners another generalized question. I do believe that both Elko and Humboldt County provide a service to the industry for mining claims, in other words, recording and title. Are you able to continue that service with the current revenues that are coming into the county in decline as the number of mining claims that are either dropping off the books? Is there sufficient revenue for you in your counties to continue providing that service to the public?

Mr. MILTON. Well, the answer is that all of the recording takes place in the Recorder's Office naturally and we have in the past tried to run that office with the fees that are generated, and since there is a substantial amount of money from mining-related fees and it has dropped this year to only 39 mining claims filed since the first of the year, we have to subsidize the Recorder's Office out of the general fund, so it is a hardship on the county just in the fees alone.

Mr. LLOYD. We have not been able to support that. As a matter of fact, we are now reducing the number of hours that the Record-

er's Office can be opened. As you mentioned, because of the budget shortfall this year we have to make some significant decisions and one of those is looking at reducing hours in which the county offices are open and the Recorder's Office would be one of those.

Chairman GIBBONS. So I would take it literally from all three of you from a state and county effect that you are seeing some hardship imposed on our government agencies, government services at the county and the state level because of the decline in our mining industry within the State of Nevada due to changes within the regulatory scheme?

Mr. MILTON. Most definitely. I would just add, and this wasn't in my testimony, but I was in the land surveying business for 25 years. The main thrust of our business up until 5 years ago was mining exploration. It is virtually nonexistent as part of our business now. We rely just on the domestic work around the county and there is hardly any mining exploration business out there at all.

Mr. LLOYD. I would add, it is totally because of the regulations. We have become totally dependent on mining, no other industry, and even though we look for other ways to diversify in Elko County, we have nothing to offer folks.

We have no infrastructure, the energy situation, the natural gas, we have none, so we have nothing to offer folks to attract them to Elko County to replace the mining industry. If it goes away, we become another ghost town.

Chairman GIBBONS. Gentlemen, I want to thank you for taking the time out of your busy schedules. I know all of you are public servants who have jobs other than just being here today to testify at this hearing and I do appreciate the time you have taken and the interest you have shown in this issue.

I commend you highly, all three of you, for your effort to help this industry survive in the state, and certainly would again say thank you on behalf of all Nevadans for what you do, but with that I would excuse all three of you.

And now I would like to call up Panel II, our second panel, which primarily will deal with the millsite issue and then tangentially some of the 3809 regulatory issues. Mr. Tony Jensen, who is the Mine General Manager of Cortez Joint Venture; Mr. Richard Harris, Attorney at Law, from the law firm of Harris and Thompson; Mr. Chuck Jeannes, Senior Vice President and General Counsel of Glamis Gold, Limited, and Ms. Debbie Laney, President of the Women's Mining Coalition. If we can get all of you to come up.

Chairman GIBBONS. I noticed that our egg timer is working effectively, but most people are not paying attention to it. It is not that we are intending to boil eggs here or throw you out if you go over. All I want to do is let you know that we are trying to keep this on schedule.

So I will ask Margaret when there is a minute remaining, so at the 4 minute period if she will just kind of wave her hand at you to let you know it is coming up. We are not going to stop you when it comes to 5 minutes. When you get to 10 minutes, yeah, we will say something, but kind of wrap it up to make sure.

I presume that we are going to see a slide show or something here coming up, so let me first offer, again, a welcome to all four of you for being here today. It is our pleasure to have you and hear your testimony and of course we will start, I presume, with Mr. Jensen, and welcome, and the floor is yours. I look forward to your comments.

STATEMENT OF TONY JENSEN, MINE GENERAL MANAGER, CORTEZ JOINT VENTURE

Mr. JENSEN. Thank you, Congressman Gibbons, and thank you for the opportunity to present here today and present my testimony. I am Tony Jensen, the Mine General Manager at the Cortez Gold Mines. I would like to thank the Committee for holding this hearing in Nevada. As you had mentioned, this is particularly relevant because of the social and economic importance of mining in this state.

Cortez Gold Mines is a joint venture between two internationally respected mining companies, Placer Dome and Kennecott Minerals. Cortez has a long history in Eureka and Lander Counties in Nevada. Mining has occurred in the Cortez District since the late 1800's and Cortez Gold Mines has been part of that community since the mid 1960's.

Gold mining is an important economic base in many rural communities. Cortez alone has an annual payroll of over 23 million dollars, contributing 3.4 million dollars in payroll taxes. It has contributed property taxes of 1.5 million dollars annually and pays an annual average of ten million dollars through the Net Proceeds of Mines tax.

Cortez Mines operates almost entirely on public lands and is therefore very susceptible to any change in public lands policy. Today I want to focus on the potential impacts of the Millsite Opinion as well as other actions taken in the final days of the last Administration.

First let me offer some background. After the discovery of the Pipeline ore deposit in 1991 the plan of operations was submitted to the Bureau of Land Management in 1992, and only after the development of a comprehensive Environmental Impact Statement, numerous public comments and hearings, technical revisions, and the posting of reclamation bonds could construction of the 270 million dollar Pipeline Project commence in 1996. This culminated in an exhaustive, comprehensive and costly permitting process spanning nearly 4 years.

Continued exploration outlined additional economic mineralization, and an amendment to the Pipeline Plan of Operations was submitted in 1996. This amendment was approved in 2000, it took almost 4 years after its submittal. Total costs to develop the amendment, the amendment alone, were in excess of five million dollars, most of which went to scientific technical studies to support the Environmental Impact Statement.

That amendment, and sadly like nearly all permits today, was immediately appealed by local and national environmental groups. In addition, the Appellants filed a Petition for Stay in an immediate attempt to shut down our operation. The Petition for Stay was denied, but the appeal will linger for years. Included in the ap-

peal and Petition for Stay was a challenge to Cortez's claims status relative to the Millsite Opinion.

Like any prudent mining company, Cortez regularly evaluates its claim package relative to the existing and projected operations. The manner in which any responsible mining company holds claims must change over time to match project development, geologic knowledge, and other factors which cannot be predicted at project inception.

The Millsite Opinion, the January 10th, 2001 Instruction Memorandum and the Yarnell Opinion have been attempts to administratively reinterpret land tenure rights established by the mining law. Firstly, these actions have impacted permitting efforts. The appellants continue to use the Millsite Opinion as an appeal point, even though it is clear that our claim maintenance activities did not violate the mining law, or any aspect of the recent legislation passed by Congress, namely the Emergency Appropriations Act for 1999 and the Consolidated Appropriations Act of Fiscal Year 2000.

Secondly, the Instruction Memorandum and the Yarnell Opinion issued by the former Administration immediately before leaving office are particularly troubling and in obvious contradiction with Congress. Citing no authority, the former Administration took the position that any location or relocation of claims requires modifications to the Plans of Operation.

If these legal interpretations are allowed to stand, this means a rather dangerous marriage of land tenure issues with the National Environmental Policy Act, in that land tenure issues are not environmental issues related to NEPA.

These actions are unacceptable. It will impact our ability to permit and operate on the public lands, as well as maintain our claims as needed to evolve with project development. And they will, I contend, lead to increased chaos in permitting, never-ending appeals, and lengthy legal battles, none of which will contribute to improved environmental protection or social progress.

The future ability of Cortez Gold Mines, indeed any mine, to operate on public land is in jeopardy for a variety of reasons. I ask you to urge the Department of Interior to review the legality and purpose of the Millsite Opinion as well as the Instruction Memorandum and the Yarnell Opinion. I thank you very much for the opportunity to come.

Chairman GIBBONS. Thank you, Mr. Jensen.

[The prepared statement of Tony Jensen follows:]

Statement of Tony Jensen, Mine General Manager, Cortez Gold Mines, Crescent Valley, Nevada

I. Introduction

Good afternoon, Congressman Gibbons and members of the Subcommittee. I am Tony Jensen, Mine General Manager at Cortez Gold Mines. I would like to thank the Committee for holding this field hearing in Nevada. This is particularly relevant because of the social and economic importance of mining in this state.

Cortez Gold Mines is a joint venture between Placer Dome and Kennecott Minerals. Both are internationally respected mining companies with numerous worldwide operations. In the United States, Placer Dome also operates the Bald Mountain and Getchell Mines, both in northern Nevada, and the Golden Sunlight Mine in Montana. We employ approximately 850 people in the United States, and about 12,000 worldwide.

More importantly, Placer Dome and Cortez Gold Mines have a long history in Eureka and Lander Counties. Mining has occurred in the Cortez District since the late

1800s and Placer Dome has been a part of the fabric of the area since the mid–1960s. For nearly two generations, we have contributed to the economic vitality of northeastern Nevada and, with the discovery and subsequent permitting and construction of our new Pipeline and South Pipeline ore deposits and mill, Cortez Gold Mines has the potential to continue contributing to the social well being of Nevada well into the next generation.

Gold mining is an important economic base for many rural communities, providing thousands of high-quality and high-paying jobs. Cortez Gold Mines currently employs 385 dedicated men and women who have produced over one million ounces of gold in each of the last three years. We have completed this feat without a single lost time accident, encompassing over three million man-hours; an accomplishment any business would be proud of.

Cortez Gold Mines' operation in Lander and Eureka Counties has a total annual payroll of over $23 million, including over $3.4 million in payroll taxes. Cortez is an extremely important corporate citizen in rural Lander County, having contributed $1.5 million in annual property taxes and an annual average of $10 million over the last 3 years to the state through the Net Proceeds of Mines taxes, approximately half of which is returned to the county. In addition, Cortez pays approximately $750,000 per year to the Bureau of Land Management (BLM) in claim holding fees.

II. Cortez' Pipeline Project Permitting

The past eight years have been a difficult period for mining in the United States, particularly for those of us operating on public lands managed by the BLM. Cortez Gold Mines is one of the largest mines in the United States that operates almost entirely on public lands and is therefore very susceptible to any change in public lands regulations. Today I want to focus on the potential future impacts to our operation of the Millsite Opinion, a subsequent Instruction Memorandum and the Yarnell Opinion that were issued in the final days of the last Administration

First, let me offer some background. After the discovery of the Pipeline ore deposit in 1991, continued drilling outlined sufficient economic mineralization on which to construct a mine in near proximity to where we had mined since the 1960's. An initial mine plan of operations was submitted to the BLM in 1992 and, after the development of an Environmental Impact Statement, public hearings and comment opportunities, technical revisions and the posting of financial guarantees for reclamation and water monitoring, construction on the $270 million project commenced in March 1996; culminating an exhaustive, comprehensive, and costly permitting process spanning four years.

Continued drilling during this period outlined additional economic mineralization, and an Amendment to the Pipeline Plan of Operations was submitted in September 1996. This Plan was approved in June 2000, almost four years after its original submittal. Total costs to develop this plan of operations from original submittal through approval were in excess of $5 million, most of which was spent on technical studies to support the Environmental Impact Statement.

Subsequently, the South Pipeline Amendment has been under appeal from local and national environmental groups since its approval. In addition, the Appellants filed a Petition for Stay in an attempt to immediately shut down the mine. The Petition for Stay was denied on January 9, 2001 but the appeal will likely continue for years. Included in the appeal and Petition for Stay was a challenge to Cortez' claims status relative to the Millsite Opinion issued by the former Solicitor.

III. Cortez Gold Mines Mining Claim Situation

Like any prudent mining company, Cortez regularly evaluates its claim package relative to the existing and projected operational situations. Additionally, the extent of the operational facilities changes following construction, and some claims are relocated to match the current and reasonably foreseeable development. Cortez must continue to monitor its claim status and relocate claims as operational and geologic conditions mandate. The manner in which Cortez or any other responsible mining company holds claims must change over time to match the project facilities, geologic inferences, growth, and other factors, which cannot be predicted during initial stages of the operation.

IV. Impact to Cortez of the Millsite Opinion and Instruction Memorandum

The Millsite Opinion, the January 10, 2001 Instruction Memorandum, and Yarnell Opinion have been attempts to administratively reinterpret land tenure rights established by the Mining Law. I will not go into details on the politics and legal issues raised by the former Solicitor's efforts; this Committee has heard abundant testimony by others on those issues. I will, however, address the past and po-

tential future impacts to Cortez of the recent administrative actions relative to the millsite—lode claim question.

First, it has impacted Cortez' permitting efforts. Appellants continue to use the Millsite Opinion as an appeal point, even though it is clear upon review that our claim maintenance activities did not violate the Mining Law, the Millsite Opinion, or any aspect of the recent legislation passed by Congress; namely, the Emergency Appropriations Act of 1999 and the Consolidated Appropriations Act for Fiscal Year 2000 - both of which addressed the Millsite Opinions.

Nonetheless, Appellants use convoluted time frames and unsupported accusations of "claim manipulation", conveniently encouraged by the former Solicitor's last minute directives, to circumvent Congress as well as defy common sense, and responsible claim management practices.

It is also important to point out that land tenure issues are not part of the National Environmental Policy Act (NEPA). However, those radically opposed to mining will continue to abuse that process by using the Millsite Opinion to try and shut down mines.

Secondly, and particularly troubling to Cortez and others trying to develop resources on public land, are the last minute Instruction Memorandum and opinion issued by the former Solicitor immediately before leaving office. In a flurry of activity, the former Solicitor and Interior Secretary issued the Yarnell Opinion and the BLM issued IM No. 2001–077, contradicting the obvious intent of Congress in enacting the Fiscal Year 2000 Appropriations Act. Citing no authority, they take the position that any location or relocation of claims requires that a modification to the plan of operations be undertaken. If these legal interpretations are allowed to stand, this means that we have a rather dangerous marriage of land tenure issues with NEPA. The BLM currently has the authority to perform claim examinations and these Interior Department mandates will only further serve to abuse the NEPA process and render more burden on an already overloaded BLM structure.

This is unacceptable, and will impact our ability to permit and operate on public lands. It will impact our ability to maintain our claims as needed to evolve with project development. And it will, I contend, lead to increased chaos in permitting, never-ending appeals and lengthy legal battles, none of which will contribute to improved environmental protection or social progress.

V. Request for Committee Support

The future ability of Cortez Gold Mines, indeed any mine, to operate on public land is in jeopardy for a variety of reasons, including the millsite—lode claim issue that I have focused on in this testimony. I ask you to urge the new Department of Interior Secretary and Solicitor to review and rethink the legality and purpose of the original Millsite Opinion as well as the Instruction Memorandum and Yarnell Opinion both of which were issued days before the end of the last Administration.

Cortez stands ready to provide you with additional details upon your request, and I thank you for the opportunity to provide testimony here today.

Chairman GIBBONS. Mr. Harris, the floor is yours, welcome.

STATEMENT OF RICHARD W. HARRIS, ATTORNEY AT LAW, HARRIS AND THOMPSON

Mr. HARRIS. Thank you, Congressman Gibbons. Good afternoon. My name is Richard Harris. I work as a mining and environmental attorney in Reno, have done so for 25 years. My remarks today will be directed toward the Solicitor's Opinion, so-called One-to-One Millsite Opinion.

Mr. John Leshy, Solicitor of the Interior Department, on November 7, 1997 issued an opinion stating that a mining claimant could hold only one five-acre millsite for each associated lode or placer claim. This was an extraordinary and unexpected ruling of law. It is a variance with 120 years of mining jurisprudence and the practices and procedures of the Interior Department itself.

Let me say by way of background and introduction that I hold a second degree in law from Stanford University in the field of mining law. My Master's thesis entitled "The Law of Millsites" was published in the two national law journals.

In 1992 I updated this paper with my law partner Richard Thompson in an article entitled "Millsites: Current Problems and, Current Issues and Unexplained Problems" which was published by the Rocky Mountain Mineral Law Foundation.

I say this because Mr. Leshy in his opinion purported to survey the entire field of mining and millsite law and yet he made no mention of either of these opinions of mine, and that is not surprising because I very strongly stated that a miner has the right to locate as many millsites as necessary to support the mineral operation. I am confident that this is the correct opinion, and let me share with you two of the reasons why this is so.

First, the current millsite law is part of the Mining Law of 1872 that was written by Senator William Stewart of Nevada. Mr. Stewart had been a highly successful mining attorney on the Comstock. He was very well acquainted with the practices and procedures of the time.

There was one mine, for example, the Gould and Curry Mine, that occupied only 600 feet along the Comstock vein, and yet the same mining company had millsite acreage of 272 acres. This was the ground necessary to support their mill. They had a reservoir blasted out of the rock. They had numerous support facilities, so William Stewart knew very well that you required a good deal of accessory land to support a land mining operation.

He came up with the five-acre millsite law for the purpose of eliminating, excuse me, limiting the abuses that had occurred under the Lode Law of 1866. People acquired excess acreage for land speculation and so each miner was allowed to locate as many five-acre millsites as necessary to support the mining and milling activities.

I am confident that Senator William Stewart who was the great proponent and champion of miner's rights in the mineral industry did not write a provision in the mining law of 1872 that would have the purpose of shackling and limiting the minerals industry.

My second point has to do with the longstanding practices of the Department of the Interior itself, and I have a chart up on the screen. Could you adjust that, Miss, so that the title is visible? Very good.

With the assistance of the Nevada office of the Bureau of Land Management I compiled a table of millsite and mining combinations issued in mineral patents from 1979 through the year 2000.

It is illustrative of the fact that there are many millsites associated with each group of mineral patents. To take one example, Cyprus Northumberland patented nine lode claims, 180 acres, they had 63 associated millsite patents. And more recently Goldfields obtained in conjunction with 19 mineral claims, 180 millsites. Interestingly enough that latter patent was issued by Secretary of the Interior, Bruce Babbitt, last year.

The ratio of millsites to mining claims is roughly seven to one. In many cases it is nine and a half to one. Solicitor Leshy in his opinion said that some BLM field offices apparently have in recent years ignored the limitations of the mining law and the BLM's regulations.

That is a misstatement. In fact, the BLM and the Interior Department have long allowed miners to acclaim and appropriate and patent as many millsites as are necessary.

These were not the actions of rogue state offices. Every opinion, excuse me, every patent was ultimately reviewed and signed by the Secretary of the Interior himself. So I say that I am confident that Mr. Leshy's opinion was adopted for purely political reasons. It is meant to hobble and to limit the mining activities on the public domain. It is a false statement of law, and I earnestly request that it be withdrawn and canceled and rendered of no effect. Thank you very much.

Chairman GIBBONS. Thank you very much, Mr. Harris.

[The prepared statement of Richard Harris follows:]

Statement of Richard W. Harris, Esq., Attorney at Law, Harris & Thompson

Introduction

Madam Chairman, Members of the House Committee on Resources, Ladies and Gentlemen. I appreciate this opportunity to discuss the Solicitor's Opinion dated November 7, 1997, in which former Solicitor John D. Leshy ruled that a mining claimant could locate no more than one millsite for each lode or placer claim. His Opinion has no foundation in law and repudiates long-established policies of the Interior Department itself.

By way of introduction, I am a Reno attorney specializing in mining and environmental law. I hold a law degree from Stanford Law School (J.D. 1975) and a special degree in mining law from Stanford University (M.S. 1975). My Master's Thesis, entitled "The Law of Millsites: History and Application," was published in 9 Natural Resources Lawyer 103 (1976) and 14 Public Land and Resources Law Digest 133 (1977). I am co-author, with my law partner Richard K. Thompson, of "Millsites: Current Law and Unanswered Questions," 38 Rocky Mountain Mineral Law Institute (1992). I have been engaged as an expert consultant on millsite issues by various mining companies, and my published works have been cited as authoritative references in prior congressional testimony.

I also hold degrees in Geological Engineering (B.S. 1969, University of Nevada, Reno) and Environmental Science (M.S. 1995, University of Nevada, Reno). I am a doctoral candidate in Environmental Policy at the University of Nevada, Reno, and my dissertation involves a review of U.S. mineral policy during the period 1992–95.

I wish to critique Mr. Leshy's Opinion on historic, legal, and practical grounds.

The Leshy Opinion

In his Opinion Mr. Leshy states, "Since enactment of the Mining Law, there appears to have been little doubt among miners and mining lawyers that the law allowed no more than five acres of millsite area in connection with each mining claim" (Opinion, p. 12, emphasis added). Mr. Leshy selectively cites various cases and legal authorities in support of his Opinion.

In fact, neither the Mining Law of 1872, one-hundred-twenty-five years of administrative decisions and legal cases, nor the actual practices of the Interior Department support his position. As noted by Mr. Patrick Garver in his appearance before the U.S. Senate in 1999:

> The Solicitor's millsite opinion is not an objective legal analysis. It is advocacy. It reflects a selective presentation of facts and misleading and incomplete characterizations of legal authorities, offered to support a restrictive new policy of this Solicitor regarding the use of public lands for mineral development. (Statement of Patrick Garver to the Senate Subcommittee on Forests and Public Land Management, June 15, 1999.)

The Millsite Provision

The Mining Law of 1872 allows the proprietor of a vein or lode to locate a five-acre millsite claim for mining and milling purposes. The only limitations are that (1) the land must be nonmineral in character; (2) it must be used for mining or milling purposes, or for a "quartz mill or reduction works"; and (3) the millsite claim may not exceed five acres in size. A 1960 amendment to the Mining Law allowed the proprietor of a placer claim to locate five-acre millsites as well.

The Mining Law of 1872 was written by Senator William Stewart of Nevada. Senator Stewart had been a successful mining lawyer during the great silver boom on

the Comstock Lode in Virginia City, Nevada. Senator Stewart was intimately acquainted with mining practices of the day, and he knew that a single five-acre millsite was not sufficient to deal with the waste rock, tailings, and surface structures needed to support a mining claim on the Comstock. By way of example, the Gould and Curry Mine occupied a mere 600 feet along the Comstock vein. Its associated millsite, however, occupied 272 acres at the intersection of Six and Seven Mile Canyons (the equivalent of 55 modern millsites). The mill building covered a full acre and graded terraces surrounded the mill. A large reservoir was blasted out of solid rock to supply water to the facility. In addition, there were offices, shops, stables, and laborers' cottages (Elliot Lord, Comstock Mining and Miners (1883, 1959 ed. at pp. 124–125); communication from Comstock Mining Services, April 17, 2001).

It is inconceivable that Senator Stewart, as the champion of miners' rights and author of the Mining Law, would have agreed to a millsite provision that precluded or drastically limited mining and mineral processing.

The purpose of the five-acre millsite provision was to curb perceived abuses in the Lode Law of 1866, which placed no limit on the size of lode claims. Lindley, in his famous treatise on mining law, describes "broom claims" consisting of a large circle of land surrounding the discovery shaft and a narrow strip extending along the supposed course of the vein. Lindley also provides a diagram taken from a patent issued under the 1866 law which shows a single claim embracing 215.31 acres (1 Lindley on Mines (3rd ed. 1914) § 59 at pp. 97–99). Some of this land was used for nonmining purposes, such as townsite development.

The new mining law therefore sought to restrict the use of "accessory lands" to mining-related purposes. This goal was accomplished by the creation of five-acre millsite claims. The resulting statute (30 U.S.C. 42(a)) states that:

> Where nonmineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such nonadjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location made of such nonadjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by . . . this title for the superficies of a lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his mill site, as provided in this section.

It is notable that the statute, while limiting a millsite claim to five acres, does not preclude a mineral claimant from locating multiple millsite claims. This is consistent with Senator Stewart's experience and the customs and practices of hundreds of mining camps throughout the American West.

Mr. Leshy points to several cases that supposedly established the one-to-one millsite rule. However, these decisions represent the Interior Department's rejection of attempts to use millsites for land speculation. In Alaska Copper Co., 32 LD 128 (1903), a mining claimant with 18 lode claims located 18 millsites in a horseshoe formation which completely blanketed the waterfront of a small harbor. None of the millsites was actually used for any mining purpose. In rejecting the claimant's patent application, the Interior Department stated that each lode claim was not entitled automatically to a separate millsite. The Secretary was clearly annoyed by the attempt to use multiple millsites for large-scale land acquisition unrelated to mining.

In another case, Hard Cash and Other Mill Site Claims, 34 LD 325 (1905), the patent applicant located four millsites in connection with four lode claims. He justified the multiple millsite locations by putting ore from each claim on a corresponding millsite. The Secretary rejected the application, saying that the applicant had failed to show a sufficient and satisfactory reason for using four millsites for the storage of ore when it was apparent that one would suffice.

The underlying rationale in Alaska Copper, Hard Cash, and other decisions is that a claimant must show a mining-related need for each millsite. This rationale found expression in U.S. v. Swanson, 14 IBLA 158 (1974), the major millsite case of the last 50 years. There the Interior Board of Land Appeals required a showing of "present use and occupancy" on each 2.5-acre tract of a millsite. "We believe that in granting a gratuity of a millsite the Government is entitled to require efficient usage, so that only the minimum land needed is taken" (Id. at 173–174). Again, the emphasis is on need, rather than a strict limitation on acreage.

There is no administrative or legal decision, to the best of my knowledge, which states specifically that a mining claimant is limited to one millsite per mineral claim.

Turning to scholarly writings and treatises, Mr. Leshy purports to survey the mining literature through 1997. He concludes that there is no support for multiple millsites. However, Mr. Leshy conveniently overlooked two of my published articles written exclusively on millsites. In "The Law of Millsites," I offer the following analysis:

> A five-acre tract might be sufficient for a small mine or mill operator, but it is clearly inadequate for a major mining company which seeks to develop a large, low-grade ore body. . . . Since the statute does not limit a millsite locator to a single claim, the obvious response is to locate several millsites, thereby acquiring enough land for all present and future needs (Harris, 1976, p. 121).

In a second article, "Millsites: Current Law and Unanswered Questions," I stated that "It is not uncommon for a mining company to locate 300 millsites to service a core group of 15 or 20 lode claims" (Harris and Thompson, 1992, p. 12–3). And further in the article I state "A millsite claimant [is] not limited as to the number of claims that he might locate, but he [is] not automatically entitled to one millsite per lode claim" (p. 12–4). In reviewing problem areas and unanswered questions of millsite law, I did not consider or discuss limitations on the number of millsites available to a claimant simply because this issue had not been raised in 120 years of mining jurisprudence.

Industry Needs and Administrative Practice. Today's mining industry is far different from the pick and shovel practices of the 19th Century. Large open pit gold mines in Nevada occupy hundreds of acres; most of this area is required for processing and support activities. As stated by Stan Dempsey, a noted mining attorney, in a 1968 article:

> Many hundreds or thousands of acres may be required for protection of the title to the mineral deposit, subsidence areas, pit slopes, concentrator sites, tailing disposal areas, and the lands needed for other mining and related purposes. (Dempsey, "Basic Problems in Locating Claims," 14 Rocky Mountain Mineral Law Institute 573 (1968)).

With the growth of large-scale mining operations in the 1960s, there was a concurrent evolution in practices of the Department of the Interior. With respect to millsites, the BLM Handbook for Mineral Examiners provided that "Any number of millsites may be located but each must be used in connection with a mining and milling operation" (H–3890–1, Ch. III § 8, Rel. 3/17/89). The BLM Manual states:

> A millsite cannot exceed five-acres in size. There is no limit to the number of millsites that can be held by a single claimant. (BLM Manual § 3864.1.B (1991)).

The Bureau of Land Management, with the consent and approval of the Interior Department, proceeded to issue multiple-millsite patents in accordance with this policy. Table 1 describes a series of mineral and millsite patents issued in Nevada from 1979 through 2000.

TABLE 1.—ASSOCIATED MINERAL AND MILLSITE PATENTS ISSUED IN NEVADA, 1979–2000

Year of patent	Patentee	Number of mineral claims	Number of millsites
1979, 1980	Placer Amex, Sterling Mineral Venture.	13	84
1982	Dresser Industries	13	27
1984	Milchem	8	16
1984, 1985	Cyprus Mines	9	63
1985	Duval Corp.	2	41
1989	Atlas Gold	6	8
1990	FMC Paradise Peak	6	99
1994	Barrick Goldstrike	22	151
1996, 2000	Gold Fields Mining	19	180
Totals		98	669

The average ratio of millsites to mineral claims for this period is 6.8 to 1—that is, approximately seven millsites for each associated mineral claim. It is interesting to note that a patent to a group of millsites in the ratio of 9.5 to 1 was issued by Secretary Babbitt in 2000. It is also interesting to note that Mr. Leshy does not

include a discussion of Nevada millsite patents in his Opinion, even though Nevada was then the leading gold producer in the United States with a history of numerous mineral and millsite patents.

The practice of issuing multiple millsite patents has been well known at the Department of the Interior—it is, after all, the Secretary of the Interior who authorizes and signs mineral patents. It is therefore incorrect for Mr. Leshy's Opinion to state that "Some BLM field offices apparently have, in recent years, ignored the limitations of the Mining Law and BLM's regulations" (p. 7).

Conclusion

Solicitor Leshy, in a 1988 book entitled The Mining Law: A Study in Perpetual Motion, gave a preview of his activist role as Solicitor for the Interior Department from 1992 through 2000. In order to force the mining industry to adopt changes acceptable to an environmentally oriented administration, he says, it would be appropriate for the Department of the Interior to "consciously reach results that make the statute unworkable" (p. 282).

The impact of Mr. Leshy's one-to-one millsite rule on the mining industry has been and will be substantial:

> The effect of applying his "acreage limitation" to existing and proposed mines has been to call into question the land positions of most existing domestic mining operations and impose an effective moratorium on the expansion of existing mines and the permitting of new mines. (Patrick Garver, Statement before the Senate Subcommittee on Forest and Public Land Management, June 15, 1999).

It is my opinion that Secretary Babbitt and Solicitor Leshy, frustrated in their efforts to obtain mining law reform through the "front door" of congressional enactment, resorted to various "backdoor" approaches such as the Opinion of November 7, 1997. 1 respectfully request that the Committee on Resources close this door.

Chairman GIBBONS. Mr. Jeannes, welcome.

STATEMENT OF CHUCK JEANNES, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, GLAMIS GOLD, LTD.

Mr. JEANNES. Thank you, Congressman Gibbons. I appreciate the opportunity to be here today. I'm Chuck Jeannes, Senior Vice President and General Counsel for Glamis Gold, Limited. Glamis is a mid-sized gold mining company headquartered here in Reno. We operate mines in Nevada, California and Honduras.

We had a long history of successful and responsible mining in the United States, have been in continuous operation for over 20 years here. Unfortunately, the benefits of Glamis' success to its shareholders, employees and the communities in which we operate have been severely threatened by the Federal policies of the past Administration.

You heard today about the Millsite Opinion. I would like to speak briefly about another Solicitor's Opinion issued in 1999, and that is what I call the Undue Impairment Opinion. I would also like to speak about the closely related mine veto provision that was included in the 3809 regulations.

The Undue Impairment Opinion was issued by the Solicitor in December '99 as I mentioned regarding our Imperial Project in California. The opinion initially received little attention because it applied only to our project, but I think that it laid the groundwork for what I'm afraid is the most damaging initiative of the Clinton Administration, that being the mine veto provision contained in the 3809 regulations, and I would point out that this provision was slipped into the regulations late in the process after the public comment period had ended.

The mine veto provision creates a broad discretionary power in the BLM to deny a project on a finding of significant irreparable harm to a scientific, environmental or cultural resource, and at Imperial the same discretionary standard was applied to our Plan of Operations.

Briefly, the Imperial project was a simple open pit, heap leach gold project. We have invested nearly 15 million dollars toward this project to date. It is environmentally benign with no environmental issues of note, as noted in the final Environmental Impact Statement.

The only contentious issue was the impact on alleged Native American cultural and religious resources. Now, the land of Imperial is not tribal land, instead the local tribe, the Quechan, assert that the entire land in this area is of significant religious and cultural value based on things like the viewsheds and the setting, feeling, and association of the area.

Until the Solicitor issued his opinion, the law governing mining projects in the California desert was very clear. The BLM would apply the unnecessary or undue degradation standard from FLPMA.

With the stroke of his pen, the Solicitor revised this law and 25 years of BLM practice. He created an entirely new standard to be applied at Imperial, that of undue impairment. And armed with this Opinion the BLM determined that any development in this area would irreparably harm spiritual and religious resources, and on that basis the Imperial Project was denied and our 15 million dollar investment was lost.

Now, there are three reasons, Mr. Chairman, why I believe this decision is extremely relevant to Nevada and to the mining industry as a whole. First, our experience at Imperial must frighten any mining company considering a new investment on public lands in the United States. We committed funding toward this project with a clear understanding of the law and the longstanding BLM practice, but 5 years after we started the permitting process the Solicitor radically changed the rules.

With this discretionary standard now embedded in the 3809 regulations any company can enter onto any public lands open to mineral location, make a discovery, invest in the property, go through the FLPMA process, meet all of the applicable environmental laws and still find at the end of the day that its permit can be denied at the discretion of the BLM.

It is this lack of certainty of investment that I believe is a major reason for the continuing flight of capital out of the United States. Secondly, it was not physical sacred sites that were at issue at Imperial, but instead the spiritual and religious importance of the area as a whole.

But the area of spiritual importance to this particular tribe is vast and is said to encompass large parts of the desert southwest, including parts of Arizona, California, and Nevada. Given these broad claims, our experience at Imperial I think sets a dangerous precedent because the land itself is so important in Native American religion there is likely very little of the American west that cannot be said to be culturally significant.

Now, I don't believe that Congress or the BLM have fully considered the immense impact these new policies may have or the huge amount of public lands that can be affected. Finally, the fundamental changes that I talked about in public land policy have been brought about with no congressional or public involvement.

The Department of Interior now for the first time possesses a discretionary ability to deny any mine plan, and any mineral development on public lands can be halted in favor of Native American religious beliefs. Both of these fundamental changes were achieved not by way of legislation following public debate or by rule making following notice and comment, but instead by the Solicitor's strategic use of legal opinions in combination with the last amendment to the 3809 regs.

In conclusion, there indeed has been a movement of exploration and mining capital out of the United States. Glamis' experience I think is typical. 100 percent of our grass-roots exploration budget this year is directed toward Mexico and Central America. And this business decision was based on a premise that I think would have been untenable just a few years ago, and that is that the political risk of operating in countries like Honduras or Mexico is less than the permitting risk in the United States.

Now, I don't believe that this unfortunate situation is irreversible. I think with prompt and decisive action by this Administration in Congress, the misdeeds that were occasioned in the past can be undone.

I think we can reverse the flow of investment dollars, tax revenues and jobs offshore and I think we can sustain the human social and economic benefits of mining in the United States, particularly in Nevada's rural communities. Thank you very much. I appreciate the opportunity to be here.

Chairman GIBBONS. Thank you, Mr. Jeannes.

[The prepared statement of Charles Jeannes follows:]

Statement of Charles A. Jeannes, Senior Vice President Administration and General Counsel, Glamis Gold Ltd.

Introduction

Thank you for the opportunity to present written and oral testimony regarding the effect of Federal mining policy changes on state and local revenues and the mining industry. My name is Charles Jeannes. I am the Senior Vice President Administration and General Counsel of Glamis Gold Ltd. A synopsis of my background and qualifications are included in the Disclosure Requirement submitted to the Subcommittee with my written testimony.

I am speaking to you today on behalf of Glamis Gold Ltd., a mid-sized gold mining company headquartered here in Reno, Nevada. Glamis is involved in the exploration for, development and mining of precious metals—primarily gold—at operations located in the United States and Central America. We operate the Marigold Mine in Nevada, the Rand Mine in southeastern California and our newest mine, San Martin in Honduras. We are also engaged in active closure and reclamation activities for two mines in Nevada and one in California that have reached the end of their productive lives.

Although a relatively small company in terms of gold production compared to some of our peers in Nevada—we will produce approximately 230,000 ounces this year—Glamis has a long history of successful and responsible operations in the United States, having been in continuous operation for more than 20 years. Glamis was one of the pioneers of heap leaching technology so prevalent in the gold industry today, and we are very proud of our environmentally sound operating mines and our innovative and award-winning reclamation practices at the closed operations.

Unfortunately, the benefits of Glamis' success to its shareholders, employees and the communities in which it operates have been severely threatened by numerous

Federal policies relating to mining enacted by the past executive administration. The two policies on which I will focus my remarks today—the Millsite Opinion and the Undue Impairment Opinion—have had and, if left in place, will continue to have a dramatic adverse effect on Glamis Gold as well as the domestic mining industry generally. I will also discuss the effective codification of the Undue Impairment Opinion in the "mine veto" provision contained in the new 3809 regulations.

Before turning to the substance of my remarks, I want to point out that Glamis Gold is a public company incorporated in British Columbia. Opponents of mining will often talk of Glamis and others in our industry as "foreign companies," stating or implying that the benefits of U.S. resources that we mine are flowing outside the country. Nothing could be further from the truth.

Given Canada's rich mining history, Glamis and many other international mining companies originated there and remain incorporated in Canada for access to its mining-knowledgeable capital markets. However, Glamis' head office and all of its executive and administrative functions are located in Reno, all of our operations are located in the U.S. or Latin America, the great majority of our shares are traded on the New York Stock Exchange and the majority of our shareholders are U. S. citizens. Accordingly, our problems are U. S. problems; the people who suffer from the policies we are discussing here today are U.S. citizens.

As stated earlier, I will focus today on the Millsite Opinion issued by Solicitor Leshy on November 7, 1997, and the Undue Impairment Opinion issued by the Solicitor on December 27, 1999. You will note that the discretionary power to deny a mining plan of operations granted by the Solicitor to the BLM in the Undue Impairment Opinion later found its way into the new 3809 regulations in the form of the "mine veto provision." The common themes among these two opinions is that they each represent drastic and fundamental changes in the mining law as enacted by Congress and administered by the Interior Department for decades; they each have had or threaten to have profound adverse impacts on the domestic hardrock mining industry; and yet, each was issued and given the force of law within the Interior Department without a shred of public or Congressional involvement. It is hard to decide which is more detrimental in the long run—the poor policy choices and failed legal reasoning contained in the opinions, or the complete disregard for the rule of law that is evident in these attempts to effect public policy by way of back door legal opinions.

The Millsite Opinion

The Solicitor's Millsite Opinion concludes generally that a miner is limited to one five-acre millsite for each valid unpatented mining claim comprising a mining operation. I have reviewed the arguments and authorities cited in the opinion and I am convinced that the Solicitor's legal reasoning is simply wrong. However, the same legal analysis reaching the same conclusion has been presented to this Subcommittee before,[1] and I would respectfully incorporate the statements of Mr. McCrum and Mr. Hubbard rather than restate the analysis here. I would simply point out the most fundamental failure in the opinion; namely, the Solicitor's failure to explain or account for the fact that the Bureau of Land Management has been expressly interpreting the mining law for decades in exactly the opposite manner as concluded in his opinion.[2] As discussed in connection with the Undue Impairment opinion below, it is critical that industry be able to rely on consistent agency interpretation and practice, to provide certainty and predictability in connection with investment decisions. The lack of such predictability in the legal regime that now permeates the domestic hardrock mineral industry, as exemplified by the Millsite Opinion, is precisely why mineral investment is being diverted from the U.S.

On at least three different occasions since 1997, 1 have heard Solicitor Leshy speak publicly about the Millsite Opinion. In each instance, he has argued that the opinion must be correct because no mining company has sued to overturn it. I would like to take a moment to point out the fallacy in this statement. First, a company would only resort to litigation with the government if the millsite to mining claim ratio limitation of the Millsite Opinion were being applied to it and it had no reasonable alternatives. I think its fair to say that in the case of the Crown Jewel decision,[3] Battle Mountain Gold Company was surely poised and ready to commence suit at the time that Congress intervened in its behalf I am aware of no other situations involving a new mine development in the United States to which the limitations of the Millsite Opinion have been directly applied. Largely due to this and other harmful policies directed at the mining industry by the past administration, there simply have been few new mine development situations to which the Millsite Opinion would be applicable. So the lack of litigation is indicative not so much of the propriety of the opinion as its lack of application to date.

Glamis Gold has had two new development projects to which the Millsite Opinion ostensibly applies. First, at its Imperial Project in southeastern California, the BLM discussed application of the Millsite Opinion, but in the end the project was denied on other grounds—more about this in a moment. Secondly, our Marigold Mine in Nevada has been engaged in the approval process for an expansion for the past three years. The Final Environmental Impact Statement in support of the new plan of operations was recently completed and a Record of Decision approving the expansion is expected in due course. Opponents of the project have raised the ratio limitations of the Millsite Opinion as a basis for denial of the project. Fortunately, the Marigold Mine is situated in a "checkerboard" area with alternating sections of public and private lands, and Glamis was able to situate its ancillary facilities partially on private ground such that it meets the ratio limitations. This configuration was deemed more expedient than litigating the applicability of the Millsite Opinion. However, had marigold not controlled private lands adjacent to its mining operations, it would have been physically impossible for it to meet the ratio limitation of the Millsite Opinion. Glamis would have either had to successfully challenge the Millsite Opinion or shut down the Marigold Mine for lack of space for additional processing facilities.

Despite Glamis' fortunate situation at Marigold, there is no question that the Millsite Opinion has caused or will cause tremendous detriment to the U.S. mining industry. In his last days in office, the Solicitor issued a follow-up opinion prohibiting the use of lode mining claims for ancillary purposes.[4] Read together, these opinions render it practically impossible for a company to construct the facilities needed to mine and process minerals on public lands, at least in an open pit configuration. If the Millsite Opinion is permitted to remain in force, a company will have no choice but to either engage in costly and time consuming litigation to challenge the opinion, or forgo the development of mineral resources on public lands.[5]

The Undue Impairment Opinion

The Undue Impairment Opinion is a Solicitor's Opinion issued December 27, 1999 regarding Glamis Gold's Imperial Project in Imperial County, California. Like the Millsite Opinion, this opinion represents an effort by the Solicitor to reinterpret existing statutes governing mining and to entirely ignore long-standing BLM interpretation and practice. While this opinion originally received little attention because it applied only to Glamis' Imperial Project, it unfortunately laid the groundwork for what I believe is the Clinton Administration initiative most damaging to the domestic mining industry—the mine veto provision contained in the new 3809 regulations.

The mine veto provision is contained at 43 CFR §3809.415. It redefines the phrase "unnecessary or undue degradation" from the Federal Land Policy and Management Act ("FLPMA") as "substantial irreparable harm to significant scientific, cultural or environmental resource values of the public lands that cannot be effectively mitigated."

You can see that this language creates a broad discretionary power in the BLM to deny a project as causing unnecessary or undue degradation upon a finding of "substantial irreparable harm." Because the Department of the Interior applied an almost identical discretionary standard to our Imperial project, by way of the Undue Impairment Opinion, and then denied the plan of operations for our mine based on that standard, some of the facts related to Imperial might give you a better idea of how the new mine veto provision can be applied generally on all BLM lands. I believe you will also understand why, if allowed to remain in force, this provision in the new regulations will do as much or more to move mineral investment out of the United States as any of the other issues being discussed here today.

Briefly, the Imperial Project would be an open pit, heap leach gold mine with three open pits, two of which would be backfilled. Glamis has invested more than $14 million to date; after another $50 million capital investment, the mine would produce around 1.5 million ounces of gold over ten years. The mine would generate substantial local economic benefit in a county with the highest unemployment rate in all of California. The project understandably has strong local support.

Most importantly, the project is very benign environmentally—the Final Environmental Impact Statement identified no environmental issues of note. The only contentious issue, and the one on which Secretary Babbitt based his denial of the project, is the impact on alleged Native American cultural and religious resources.

The physical resources located at the Imperial Project site are unremarkable. They include pot drops, lithic scatter from chipping stations and small sections of a large braided system of historic walking trails that passes through the area on the way to the Colorado River. This is not Tribal land, it is public land open to mineral location. There are no burial areas or evidence of historical habitation. Importantly, the local tribe, the "Quechan," has admitted that the area has not been used

for religious, cultural or other purposes for at least fifty years. In fact, the only other significant recent use of this area apart from mineral exploration was that General Patton's Seventh Army trained there prior to World War II. In short, the area is far from pristine and there are few physical resources there. The Quechan instead assert that the land is of significant religious and cultural significance to their tribe based on the "vistas", "viewsheds" and the "setting, feeling and association" of the area.

The Imperial Project is located within the California Desert Conservation Area ("CDCA"). Until the Solicitor issued his opinion, the law governing mining projects in this area was very clear—the BLM applied the unnecessary or undue degradation standard from FLPMA. For each of fourteen plan of operation approvals at nine different mines since the CDCA was created in 1976, the BLM applied the unnecessary or undue degradation standard. And with respect to cultural or historic resources, the law was equally clear. The combination of FLPMA and the National Historic Preservation Act required a company to consult with local Native Americans, to search for and record any cultural or historic resources on the affected lands, and to work with the BLM and the local tribe to attempt to mitigate any impacts to those resources. But in the end, the applicable law provided that a mining project would not be denied on the basis of impacts to cultural resources.[6]

With the stroke of his pen, Solicitor Leshy revised twenty-five years of administrative practice and interpretation. He created an entirely new legal standard to be applied within the CDCA, that of "undue impairment." The opinion states that this standard is different from and more stringent than the old unnecessary or undue degradation standard, and that it gives the BLM discretionary authority to deny a plan of operations based on impacts to the kinds of non-physical resources asserted to exist at Imperial.[7] So, for Glamis, the Undue Impairment Opinion made a discretionary balancing test directly applicable to the Imperial Project. For the rest of the industry, unfortunately, I think the groundwork was laid for what we now see in the new definition of unnecessary or undue degradation contained in the 3809 regulations.

Armed with this opinion, the BLM concluded that the Imperial Project would "unduly impair" the religious and cultural resources of the Quechan Tribe. Because the resources in the area are spiritual rather than physical, the BLM found that any development of these lands would impair those resources and that no amount of mitigation by Glamis could offset the adverse impacts. On that basis, the Imperial Project plan of operations was denied, and with it, Glamis' $14 million investment was lost.[8]

Impacts of Undue Impairment Opinion and 3809 Regulations

1. Lack of Predictability. Glamis' experience at the Imperial Project is one that brings fear to any company considering a material investment in a new mineral development on U.S. public lands. Glamis committed millions of dollars towards this project based on a clear understanding of the applicable law and long-standing BLM practice. Two draft environmental impact statements were prepared for the Imperial Project; even in the face of the Quechan allegations about its impacts, the BLM chose in each draft to propose the Glamis development plan as its preferred alternative. Then, over five years after Glamis first submitted its plan of operations, the Solicitor radically changed the applicable rules with the issuance of the Undue Impairment Opinion and based on this opinion, the project was denied.

With the codification of the undue impairment standard in the new 3809 regulations, this lack of certainty and predictability necessary for a company to commit substantial capital to a new project now applies to all BLM lands. A company can enter upon lands otherwise open to mineral location and development, make significant expenditures to discover and develop a mineral resource, apply for a permit and meet all applicable environmental laws and regulations during the NEPA process, only to be told in the end that its permit will be denied based on a discretionary finding of "significant irreparable harm" to some resource. This legal quagmire can certainly be identified as a substantial reason for the continuing flight of mining capital out of the United States.

2. Potential Impacts of Undue Impairment/Mine Veto Provision. The kinds of resources that were cited to justify the denial of the Imperial Project include non-physical resources such as viewsheds and the "setting, feeling and association" of the area. These resources, along with the alleged impacts on the ability of the Quechan to conduct their traditional religious and spiritual practices, formed the basis for the denial of the plan of operations. Importantly, the Quechan have specifically stated that the Imperial Project impacts only a small portion of the 170-mile long "Trail of Dreams," and that the area of spiritual significance to the Tribe is

vast—extending east into Arizona and west to Santa Catalina Island, north to Las Vegas and south into Mexico.

Given these broad claims of significance, the Record of Decision for the Imperial Project sets a tremendous precedent for the denial of mineral or other development plans on all public lands. As a practical matter, because of the importance of the land itself to the religious and spiritual practices of Native Americans, there is likely very little of the American west that cannot be claimed to be a "significant" resource for cultural or spiritual purposes, and non-Native Americans have a very limited ability to challenge such assertions. This problem was specifically identified by the BLM in the Environmental Impact Statement in support of the new 3809 regulations:

> Of specific concern are activities that will potentially affect Native American sacred or religious values. One can argue that religious significance, substantial irreparable harm, and effective mitigation are determined by those who hold those beliefs, not by BLM. Analyzing the implementing and impact of this provision as it applies to sacred and religious values is further complicated by the fact that most of the Native American religions are based on or incorporate the concept that each individual determines what is significant for herself/himself. *Because of these concerns, we assume that this provision as it relates to sacred and religious values will be applied extensively.*

Final Environmental Impact Statement, "Surface Management Regulations for Locatable Mineral Operations," p. 126–27 (October 2000) (emphasis added).

I can tell you from our experience at Imperial that this concern is very real. It is practically impossible to test or challenge an assertion of spiritual significance as to a particular parcel of land. I do not believe that the BLM, Congress or even most industry observers have fully considered the immense impact this new provision in the 3809 regulations may well have in the future, or the vast amount of public lands that could be affected.

In connection with the lawsuit brought by the National Mining Association challenging the new 3809 regulations, a motion to stay the implementation of the regulations was sought. I was asked to provide an affidavit in support of that motion, describing the impact of the 3809 regulations on Glamis Gold. Reciting what is included in that affidavit is the best way I can describe to this Subcommittee what I believe are the specific impacts of the adoption of the new 3809 regulations on my company. I stated that Glamis had recently adopted its exploration budget for 2001 and that out of a $3 million expenditure, no funds were budgeted for grass roots exploration in the United States. Our only exploration expenditures in the United States will be in the immediate vicinity of our existing Marigold Mine in Nevada, with all grass roots exploration funding targeted towards Mexico and Central America. I stated then what I continue to believe today, particularly in light of the denial of the permit for our Imperial Project: that the political risk of operating in countries like Honduras, Guatemala or Mexico is less than the permitting risk in the United States since the enactment of the 3809 regulations and the issuance of the various Solicitor's Opinions we have discussed today.

3. Lack of Public/Congressional Involvement in Substantial Public Policy Changes. The third and final observation flowing from the Undue Impairment Opinion and the new definition of unnecessary or undue degradation in the 3809 regulations is how these substantial changes in public land policy have been brought about with absolutely no public or Congressional involvement. The Department of the Interior now possesses a discretionary veto power to deny any mine plan of operations, and mineral development on public lands can be stopped in favor of Native American religious practices. All of this was achieved by the Solicitor's strategic use of legal opinions combined with the last-minute inclusion of the mine veto provision in the 3809 regulations after the public comment period had already closed. I would ask this Subcommittee to consider carefully what appears to be a clear usurpation of the legislative function by the executive branch.

I fully acknowledge that reasonable people can disagree, and that there are strong opinions on both sides of these issues. I am sure there are people in this room today who passionately believe that Native American cultural or religious concerns should trump mineral development; those same individuals likely believe that the BLM should have an absolute right to say no to mineral development in all cases, even if it means changing the rules after an investment has been made. I would welcome the opportunity to engage in public debate over those issues—to use opportunities such as these to comment on specific legislation under consideration and to discuss the economic and human impacts of these policies. These are serious public policy issues that will profoundly impact not only the minerals industry but also the rural

West as a whole, and they deserve our full attention. Unfortunately, to date, we have been denied that opportunity.

Conclusion

During the Mining Law reform debates early in the Clinton Administration, Secretary Babbitt made clear his desire for "a process . . . for determining that mining activity does not occur on lands that are unsuitable for it—that have higher values for other uses."[9] This provision in the legislation supported by the administration became known as the "suitability" provision and became central to the debate over comprehensive reform. Eventually, because of the same fundamental problems we have discussed today, the Secretary's request for the discretionary power to declare lands unsuitable for mining was rejected by Congress.

In the end, however, on the final day of office, Secretary Babbitt achieved by various machinations within the Interior Department precisely what he asked for and was denied by Congress. I would ask this Subcommittee to lend its assistance to efforts to reverse the unlawful Millsite Opinion and to support the current administration efforts to reconsider the ill-conceived 3809 regulations and, in particular, the mine veto provision.

FOOTNOTES

[1] See the Testimony of R. Timothy McCrum before the Energy and Mineral Resource Subcommittee of the House Resources Committee, "Hearing on Mining Regulatory Issues and Improving the General Mining Laws," Washington, D.C., August 3, 1999; and the Statement of Randall E. Hubbard before the Subcommittee on Energy and Mineral Resources of the House Resources Committee, "Oversight Hearing on the Effect of Federal Mining Fees and Proposed Federal Royalties on State and Local Revenues and the Mining Industry," Golden, Colorado, October 23, 1999.

[2] The BLM Manual states: "A millsite cannot exceed five acres in size. There is no limit to the number of millsites that can be held by a single claimant." BLM Manual § 3864.1.B (1991). The BLM Handbook for Mineral Examiners states: "Each millsite is limited to a maximum of five acres in size and must be located on non mineral land. Millsites may be located by legal subdivision or metes and bounds. Any number of millsites may be located, but each must be used in connection with mining or milling operations." BLM Handbook for Mineral Examiners, H. 3890–1, p. 111–8 (1989).

[3] See March 25, 1999 Decision of the Interior Department revoking Crown Jewel's Final Environmental Impact Statement in light of the Millsite Opinion.

[4] Solicitor's Opinion M–37004, "Use of Mining Claims for Purposes Ancillary to Extraction," January 18, 2001.

[5] The alternative of a land exchange to gain the required ground for ancillary facilities as offered by the Solicitor in his opinion has been shown to be a severely limited option that is of no practical help in these circumstances. See the testimony of M. Craig Haase before the Subcommittee on Energy and Mineral Resources of the House Resources Committee, "Oversight Hearing on the Effect of Federal Mining Fees and Proposed Federal Royalties on State and Local Revenues and the Mining Industry," Golden, Colorado, October 23, 1999.

[6] See 45 Fed. Reg. 78,902, 78,905 (Nov. 26, 1980): "If there is an unavoidable conflict with an endangered species habitat, a plan could be rejected based not on section 302(b) [of FLPMA], but on section 7 of the Endangered Species Act. *If upon compliance with the National Historic Preservation Act, the cultural resources cannot be salvaged, or damage to them mitigated, the plan must be approved.* Essentially, . . . these laws may slow the plan approval process; one law may stop a plan while the other may only delay it." (emphasis added).

[7] Solicitor's Opinion re Regulation of Hardrock Mining, p. 17–18 (December 27, 1999).

[8] "Record of Decision for the Imperial Project Gold Mine Proposal" approved by Bruce Babbitt, Secretary of the Interior, January 17, 2001, BLM Case File No. CA 670–41027. On March 12, 2001, Glamis filed suit to overturn this decision in the United States District Court for the District of Columbia, Case No. I:0ICV00530.

[9] Hearing on S.775 before Senate Subcommittee on Mineral Resources, Development and Production of the Committee on Energy & Natural Resources, 103rd Cong., 1st Sess. at 43 (1993).

Chairman GIBBONS. We turn now to Ms. Debbie Laney who is the President of Women's Mining Coalition. Ms. Laney, welcome to our Committee. We are happy to have you and look forward to your testimony.

Ms. LANEY. Thank you, Congressman Gibbons.

Chairman GIBBONS. You may want to pull the mike closer to you.

Ms. LANEY. Can you hear me?

Chairman GIBBONS. Yes.

STATEMENT OF DEBBIE LANEY, PRESIDENT, WOMEN'S MINING COALITION

Ms. LANEY. My name is Debbie Laney, and I am here today as President of the Women's Mining Coalition. The Women's Mining Coalition is a grass roots organization and we came together in late '92, '93, because of all of the effects of low metal prices and rules and regulations that were affecting our jobs and our families' jobs.

The women in the Women's Mining Coalition work in many facets of mining. Many of the women involved in our group work for service groups and manufacturing groups that support mining through the equipment and services they provide.

We have direct day-to-day contact with the mining industry. We are out at mine sites on a daily basis. Our offices are out there. We work in the mines and the mills, members drive trucks, are shovel and drill operators.

I personally work for Barrick Gold Strike. I'm the Chief Metallurgist for the Process Division there. I started working for Barrick last fall. I have been in mining in Nevada for 17 years, and throughout my career for over 26 years in the west I have worked in copper, gold and poly metallic mines. I have undergraduate and graduate degrees in Metallurgical Engineering and I'm a licensed Professional Engineer in the State of Nevada.

I understand this hearing is addressing several issues. I'm going to focus primarily on 3809 and some of the regulations that became final on the last day of the Clinton Administration. We, the Women's Mining Coalition, feel that much of what is going on is going to be very damaging to our lifestyles, our industry, and that it could have very negative impacts on everyone in Nevada as well as multiple other states throughout the whole nation.

The Women's Mining Coalition has been very active in the long debate over these changes and has submitted many comments and documents over the last few years on things. We do not believe that these final regulations that were adopted in January 2001 fairly address our concerns or reflect our comments, and we are very glad that we are having the ability now to make more comments on things and to maybe change things where they will more fairly address the issues that are involved.

The National Academy of Sciences report was issued and it was put out to study the regulations to make recommendations based on scientific fact and findings, and they concluded in 1999 with a report that current regulations were generally effective. They recommended a few specific changes, but that on the whole the 3809 regulations were effective. They concluded that implementation of the existing regulations presented the greatest opportunity for improving environmental protection and the efficiency of the regulatory process.

The Women's Mining Coalition appeared before the Committee and as a group we were and remain supportive of the NAS conclusions and recommendations. A few of the specific provisions that we would like to talk about is the mine veto provision which I think Chuck has kind of talked about also.

Mining companies and exploration companies put many, many millions of dollars into development of areas looking to see if a mine potential is there. And if we don't have any assurance and

can spend multi-millions of dollars trying to develop something only to be told at the end, sorry, too bad, tough luck, you can't do this, then we are in a world of hurt.

We have to have some knowledge and confidence going in that if we do everything and follow all of the rules and regulations and do everything and at the end it looks to be a good project with environmental stewardship at the forefront that, yes, we will be given the go ahead.

Not having any assurances in those positions can be, why would we want to spend our money, why would any company want to spend money and it is a big problem. People won't spend money. I have many friends working overseas who have gone out of the industry and that, because companies are going down.

So I think that it is very, very important that we have rules and regulations in place to know that when the money is spent and things are done properly that we can be assured that things will go on and move forward.

Another area that I would like to talk about is the duplicative standards. We have many, many standards in the United States, Federal standards, State standards for air and water quality and different things like that. Much of these, the new regulations with 3809, want to duplicate those standards. They are not doing anything better. They are just adding more paperwork.

We have very large environmental departments at all of the mine sites anymore. When I first started in mining, the metallurgist was also the environmental engineer and nowadays the environmental staffs are oftentimes way larger than the metallurgical staffs at the mine.

We want these people out there watching and making sure things are done properly and not sitting in their offices filing multiple paperwork over and over, you know, the same thing. We want them out doing things to help keep the environment clean and safe. And I think that, you know, if we have all of these duplicative rules they get sidetracked and they are in being paper pushers and not really doing what we need for the environment.

I think sensible changes to the 3809 regulations will enhance environmental stewardship, not hurt it, and I know that all of the companies I have worked for have always been very responsible. And I'm a mother, I'm a grandmother. I believe that without mining the United States will not be as strong as it should be.

When I moved to Nevada my son was 4 years old. He is now 21 and stationed as a corporal in the Army in Kosovo and has been in gunfights as recently as a month ago, and I want to know that his safety is there, and without a strong mining industry we can't be number one as far as protecting people who are being taken advantage of.

We can't be the world power that we are today if we lose the mining industry, and I want to know my son has the best equipment and bullets and this and that and the other thing and that he will be safe over there, or as safe as he can be. And I think that the mining industry and our core industries in the United States if we lose them and have to depend on outside countries to get that we are going to be very, very sorry in the long run and it will be by then too late to do something about it.

In conclusion, the Women's Mining Coalition asks that Congress continue to support the conclusions and recommendations of the National Academy of Science report in its entirety. We believe that the regulatory program described in the NAS alternative, and then finally I ask on the 3809 regulations accurately reflect the conclusions and recommendations of the report and complies with the Congressional directive that the BLM adopt regulations consistent with the NAS recommendations.

We believe that the current regulatory system bolstered by the specific recommendations of the NAS Committee will allow for environmentally responsible mining on public lands.

If the Federal Government does not adopt policies that are more supportive of mining, we fear that future opportunities for women to work in the domestic mining industry will evaporate, and not only women, but men, families, everyone will be impacted and I think we are seeing these impacts already. Thank you.

[The prepared statement of Debbie Laney follows:]

Statement of Debbie Laney, President, Women's Mining Coalition

Introduction

Good afternoon Congressman Gibbons. My name is Debbie Laney and I am here today as the President of, and on behalf of the Women's Mining Coalition. The Women's Mining Coalition is a grassroots organization that supports environmentally responsible mining. Our membership is comprised of women working (or looking for work) in many facets of the mining industry including geology and exploration, engineering, business and management, mining and heavy equipment operation, equipment manufacturing and sales of goods and services to the mining industry. We have a nationwide membership, with members and participants from coal, iron ore, and hard rock mining and manufacturing companies, trade associations, and educational institutions. Our members have direct, day-to-day experience in the industry and with Federal and state regulation of mining and exploration.

I work for Barrick Goldstrike Mines, Inc., near Elko, Nevada where I am the Chief Metallurgist for the Process Division. I started working for Barrick last fall, and have worked in the mining industry in Nevada for seventeen years and have been in the industry for a total of 26 years working for gold and copper mines across the West. I hold undergraduate and graduate degrees in metallurgical engineering and am a licensed professional engineer in Nevada.

While I understand that this hearing is addressing several issues, my testimony will discuss only the new 3809 regulations that became final on the last day of the Clinton Administration. I will talk about the impacts from those regulations and some of the changes that need to be made so that the 3809 regulations are legal and practical.

The Women's Mining Coalition has been an active participant in the long debate over changes to BLM's 3809 regulations. We submitted detailed written comments on the proposed regulations in 1999, and additional comments in February, 2000, after Congress directed the BLM to reopen the comment period to allow comments on the report from the National Academy of Sciences. We also submitted detailed scoping comments to the BLM in 1997. Many individual members attended and made statements at public hearings in Nevada and other states. We do not believe that the final regulations that were adopted in January, 2001 fairly addressed our concerns or reflected our comments and we were pleased that the National Mining Association and the State of Nevada decided to challenge the final rules in court.

Naturally then, we support the BLM's recent proposal to suspend portions of the new rules and will be submitting comments on behalf of the Women's Mining Coalition before the May 7, 2001 comment deadline. A review of the new 3809 regulations is appropriate for at least two reasons: first, some of the final rules exceed BLM's legal authority; and second, some provisions of the rules will have significant adverse impacts on the mining industry and its employees, in exchange for very little environmental benefit.

The National Academy of Sciences Report

In reviewing the new 3809 regulations, the most important information for the Subcommittee and the BLM to consider is the report of the National Research

Council of the National Academy of Sciences. As you know, in 1998, Congress directed the National Academy of Sciences to study the effectiveness of the current regulations. The NAS convened a Committee of independent scientific and technical experts to conduct the study. The Committee held hearings, toured mines, and considered a mountain of data and information. The Committee's report, issued in 1999, concluded that the current regulations were generally effective, but recommended a few specific changes. The NAS Committee also concluded that improved implementation of the existing regulations presents the greatest opportunity for improving environmental protection and the efficiency of the regulatory process. Members of the Women's Mining Coalition appeared before the Committee, and as a group we were—and remain—supportive of its conclusions and recommendations.

In 1999 and again in 2000, Congress enacted a law that limited BLM's authority to promulgate new 3809 regulations. BLM was allowed to write regulations that were "not inconsistent with the recommendations" in the NAS Report and BLM's other statutory authorities. Somehow the Interior Department lawyers read that law to give BLM unlimited authority to write the final 3809 rules—even if those rules were in conflict with or went beyond the recommendations of the NAS Committee. Thus, despite the law passed by Congress, the final 3809 regulations are not consistent with the recommendations contained in the NAS Report.

I want to address a few specific provisions in the final rules that are inconsistent with the recommendations of the NAS Report and which will have a significant impact on mining in Nevada and other public land states.

The "Mine Veto" Provision

Of course, you are familiar with the economic impacts projected from the new 3809 regulations. Even by BLM's own predictions—which seriously understate the impacts' the impacts are severe. As a result of these regulations, up to 3,200 Nevadans are expected to lose their jobs, industrial output in Nevada will decline by between $180 and $540 million, and Nevadans will lose between $83 and $249 million in personal income.

The Women's Mining Coalition believes that these impacts are understated because the BLM never acknowledged the impact that some of the provisions—particularly the "mine veto" provision—will have on mineral exploration and development. Development of a new mining property requires significant investment and expenditure before a single ounce, pound or ton can be mined and sold. That investment is at risk until the mine is fully permitted and becomes operational.

Under the prior 3809 regulations, mine operators could plan and design to meet reasonably objective criteria: water quality standards, air quality standards, revegetation and reclamation requirements. We were assured that if an operator could meet those standards, as evidenced by appropriate Federal and state environmental and reclamation permits, that the plan of operations would be approved.

That assurance is gone. The "mine veto" provision injects a significant new element of risk into mine permitting by allowing BLM to disapprove a mine plan—even a plan that meets all applicable environmental requirements—if BLM determines that the impacts may be too significant. Mine operators have no standards that will assure an approved plan, and investors have no assurance that BLM or an anti-mining special interest group will not "discover" a new resource or new impact even after tens of millions of dollars have been invested in exploration, engineering and permitting. Prudent investors will redirect their investment dollars into less risky investments and the flow of money into mineral exploration on public lands in the U.S. will simply dry up. Even though the "mine veto" provision surfaced for the first time last November when BLM published the final rule, we can already see the impacts. Mining exploration dollars are moving out of the United States—drill rigs, geologists, landmen, and suppliers, in Nevada are idle.

For those of us who live and work in Northern Nevada the impacts are obvious. Larger companies have slashed exploration budgets and smaller companies may not be doing any exploration this field season. Suppliers and businesses that rely on the mining industry are cutting back and state and local government revenues are down.

Duplicative Environmental Standards

A second concern with the new 3809 regulations is the complex and lengthy environmental standards that duplicate authority already held by Federal and state environmental agencies. In the new 3809 regulations, BLM has assumed that its role as land manager also gives it the authority to second guess or overrule decisions by the Federal Environmental Protection Agency, Army Corps of Engineers, and the Nevada Division of Environmental Protection. These duplicative permitting requirements are wasteful, costly and unnecessary.

The NAS Committee considered the issue of environmental standards and the allocation of permitting responsibilities and concluded as follows:

> The overall structure of the Federal and state laws and regulations that provide mining-related environmental protection is complicated, but generally effective. The structure reflects regulatory responses to geographic differences in mineral distribution among the states, as well as the diversity of site-specific environmental conditions. It also reflects the unique and overlapping Federal and state responsibilities.

NAS Report at pages 89–90.

The NAS Report did not recommend that BLM expand its role in environmental permitting or review environmental permitting by other Federal and state agencies.

Many of the performance standards in the final regulations are also in conflict with the NAS Report's recommendation that BLM should "continue to base . . . permitting decisions on the site-specific evaluation process provided by NEPA," rather than writing "technically prescriptive standards" into the regulations. NAS Report at 108.

Importantly, BLM did not find fault with the current environmental standards or claim that the new environmental performance standards will achieve substantial environmental benefits. BLM's Final EIS on the final rules acknowledges that the existing laws and regulations in Nevada already incorporate most of the performance standards in the new regulations. BLM also admits that the new requirements will not result in environmental improvements. Instead, the predicted environmental benefits from the new regulations result from the fact that there will be less mining because of the increased delays and costs of permitting.

Sensible Changes to the 3809 Regulations Will Not Damage the Environment

I have been disappointed by the response of special interest groups and the press (even here in Nevada) to the proposal to reconsider some provisions of the 3809 regulations. It is important that the Subcommittee understand that sensible changes—changes that will bring the regulations in line with BLM's legal authority and the NAS Report" will continue to provide, and even enhance, environmental protection.

Most importantly, I have read claims that the proposal will repeal bonding requirements and allow mining companies to walk away from their reclamation responsibilities, leaving Federal and state taxpayers to pay reclamation costs. That is not true. Bonding to assure that mined lands are reclaimed is required under the prior BLM rules and under Nevada law. Those requirements would survive even if the new 3809 regulations were entirely suspended. However, the new 3809 regulations expanded the current bonding requirements in response to recommendations of the NAS Committee. The Women's Mining Coalition (and almost everyone else in the mining industry) supported those changes and will ask BLM to retain the expanded bonding requirements.

Special interest groups also claim that the proposal could damage water quality. That is also untrue. The regulations adopted by BLM in 1980 require that mine operators comply with all Federal and state laws and regulations regarding water quality. That means that all mines are subject to the requirements of the Federal Clean Water Act, as well as Nevada's laws, regulations, water quality standards and permitting requirements. Suspending the new 3809 rules will not change the substantive water quality standards that apply to mining. Because the 1980 regulations were written to incorporate water quality requirements by reference, they are constantly and automatically updated when EPA or the states change their water quality laws or regulations. The claim that the 3809 regulations are "outdated" is untrue.

Conclusion

The Women's Mining Coalition asks that Congress continue to support the conclusions and recommendations of the NAS Report—in its entirety. For example, we believe that the regulatory program described in the "NAS Alternative" in the Final EIS on the 3809 regulations accurately reflects the conclusions and recommendations of the report and complies the Congressional directive that BLM adopt regulations consistent with the NAS recommendations. We believe that the current regulatory system, bolstered by the specific recommendations of the NAS Committee will allow for environmentally responsible mining on public lands. If the Federal Government does not adopt policies that are more supportive of mining, we fear that future opportunities for women to work in the domestic mining industry will evaporate.

Chairman GIBBONS. Thank you, Ms. Laney. And let me assure you that your son and his ability to defend this nation is one of our top priorities, and that is why when I opened this hearing I indicated that this nation, a great deal of its ability to not only secure our own national security but others who are being threatened directly is related to the viability and the existence of a sound mining industry.

So I hope you will understand and know the heartfelt compassion for you and your son out there and we will do everything possible to make sure that both this industry and the national security and the armed services of this nation are well cared for.

Let me ask a question of Mr. Jensen. You indicated in your testimony the Yarnell Opinion of Solicitor Leshy. Can you elaborate a little more for not only myself and perhaps the people in the audience what the Yarnell Opinion was?

Mr. JENSEN. I would be happy to do that. Yarnell is a mine in Arizona. There was an opinion issued late last year, early this year, I'm not exactly certain of that, and it had to do with the ability to use lode site claims for ancillary facilities.

And while I don't have a personal objection to that part of the opinion, what the opinion did say and what I do have a problem with is that in the event that any lode claims were converted or any kinds of locations or relocations happened, then that would trigger a new Plan of Operations to be done. And the problem in all of that is then if indeed a new Plan of Operations were required, then you would be subject to the Millsite Opinion, so it is a very dangerous web of legal interpretations that certainly need to be addressed.

Chairman GIBBONS. Let me ask your question to the other witnesses as well. The new 3809 regulations and provisions thereof, as Mr. Harris, Mr. Jeannes talked about, the mine veto rule, how would that, or how do you think permitting of the Pipeline and South Pipeline deposits would have been affected if they were done under the current 3809 regulations and the mine veto provision that is in this regulation?

Mr. JENSEN. I would be happy to start on that conversation and then I will turn it over to my colleagues who know the 3809 issue very much better than I do. It would be hard for me to answer very much what might have happened. And what I mean by that testimony is that certainly the South Pipeline operation is just an amendment to the Pipeline operation. It is an extension to the same mineralized body and from that standpoint it certainly is not in a sensitive or troubling type of setting.

The Pipeline and South Pipeline deposits are very benign. I don't think there is any other mining operation that has the benefit quite like we do in that the environmental aspects of our property are excellent.

Having said that, once we get to the stage where the Bureau of Land Management would have ultimate authority, what would have they said? What would have they found out? I can't answer what might have happened then. What I would like to say is it does put a dangerous amount of authority in one set of hands.

Chairman GIBBONS. Before I asked that question I was not intending to have the other colleagues discuss something that is

directly related to your business and your company's operations, so I apologize for giving the others the impression I was going to ask them about something that took place in someone else's mine. That would be a bit unfair.

But let me turn to my old colleague and good friend, Richard Harris. You are the leading expert on millsites. In fact, BLM has used your work as the role and the model for determining and understanding millsite opinions simply because you literally wrote the book on millsites and the millsite law.

But let me ask, Mr. Harris, if you would be willing to express an opinion on the provisions in the new 3809 regulations which redefines, let me quote the terms for you so that you know what I want to ask, and the term is unnecessary or undue degradation and includes the term substantial irreparable harm. Let me hear your opinion on the inclusion of those with regard to case law, defined issues that have already been looked at with regard to those opinions. Could you give me your thoughts on that?

Mr. HARRIS. My concern about the regulations is that they allow untrammeled administrative discretion, ultimately whether a mine shall be allowed or not allowed. I recall an experience earlier on in my career, a client of mine had been successfully conducting a pumice operation in Northern California for a number of years. A new district ranger was assigned to that area, and his first statement was that I don't want mining in my forest, and that set the stage for very acerbic relations for a number of years to the point where my client was very nearly put out of business because this one bureaucrat did not want mining in his forest.

Here we have even a broader discretion wherein a series of Federal officials can determine whether they want mining in their desert or on their property and therein I think lies the problem and the danger. Mining is heretofore a certain priority. That is to say if you could find it and you could permit it, then you could mine it. We no longer have that assurance.

I will echo Mr. Jeannes' comment. I was speaking with a president of a mining company the other day. He indicated that his company, too, was spending all of its money, exploration monies outside the United States. He said, Richard, we think that most third world nations offer a greater security of title than does the United States of America, and that is the present legacy of the Clinton Administration and it poses a great threat and hazard. It is a total disincentive to expenditures of money as Mr. Jeannes has said.

Chairman GIBBONS. Thank you. In fact, let me turn to Mr. Jeannes and ask him a question since he brought up the fact that your company, Glamis Gold, is both in United States and in Honduras and now spending a lot of its resources in terms of its exploration dollars in Central America and Mexico and other countries there.

Can you compare and contrast, if you would for us, the differences in permitting in your U.S. Operations versus say the Honduran operations for us?

Mr. JEANNES. Yes, I would be happy to. Actually, it is easy to do because we just opened this new mine in Honduras. It only has been in commercial production since January 1st.

The mine is constructed to North American standards. The new Honduran mining law essentially requires the same sorts of environmental protections that are required in the United States in terms of lined leach pad facilities with leak detection systems in the ponds and the like.

The difference and the huge difference is that there is a desire among the bureaucrats, the members of the bureaucracy that you are working with in Honduras to move this thing along and get it done, because they realize how important the outside capital investment is to their country.

Ours is a relatively small mine producing only 120,000 ounces a year, but we represent almost 6 percent of the gross national product. It is a very poor country and so they were anxious to work with us and not have things be unnecessarily delayed.

So at the end of the day the permit, and all of the necessary approvals, including preparation of a full Environmental Impact Statement as we do here, took just over a year, as compared to, well, at Imperial we never did get our permit. Our latest Marigold expansion Environmental Impact Statement took a bit over 3 years and it is not done yet.

Chairman GIBBONS. So each delay costs your company a million in terms of not just the investment but the long term delay in getting a production going from that investment. After all I'm sure there is millions of dollars required in each one of those permitting requirements that you have spent.

Let me ask Ms. Laney, and welcome you, and I'm sure the people in the audience are very pleased as we all are to see women have a prominent role in mining these days and to realize the importance that women have contributed to mining. It is a great pleasure to have the Women's Mining Coalition starting to take an active role—.

Ms. LANEY. Thank you.

Chairman GIBBONS. —in the public's perception of mining in this country. But one of the things I wanted to talk to you about, of course, is as a Metallurgical Engineer and somebody who probably has in the past dealt with environmental issues of a mine, is it your opinion, with the company you work for, that they change their environmental practices when they step over the boundary of U.S. Territories into another country?

Ms. LANEY. No. Pretty much all of the companies I work for, and I have worked in South America and Central America also as a Metallurgical Manager. We always went either to the country's environmental standards or if we didn't feel they were high enough to U.S. Standards, because we want to be in a country a long time. We want to have long term involvement with the communities and stuff and you can't do that if you are harming them.

Chairman GIBBONS. So many claims that we have all read about that mining companies are flooding out of the United States simply to take advantage of lower environmental standards are not true from the standpoint of U.S. Companies going there?

Ms. LANEY. No, I don't believe they are. I think it is just because you are allowed to follow the rules and make the commitments, and then at the end they say yes, go ahead rather than, well, gee, we are not sure if you can really do this or not. So I think it is

the fact that you can go in knowing if you do it the right way that ultimately you will get to the end goal.

Here in the U.S., with some of this you don't know if you will ever get there even after much money, ample documentation and that, and so I think it is more the fact that we have assurances and the countries seem to realize the value that mining can add to their economies and to their structure and to their security.

Chairman GIBBONS. Would all of the three gentlemen there agree with her comments or have anything to add with regard to the direction of operation going overseas?

Let me throw in another variable. Let's take the price of gold, does the price of gold dictate where you prospect other than the permitting requirements in terms of cost of getting those permits achieved or you can even throw in the permitting costs, does the price of gold add to your decision to go overseas versus the United States?

Mr. JENSEN. Well, I would like to respond to the first part of your conversation. Having an opportunity to work 4 years in Chile, I too have had exactly similar experiences to Glamis in Honduras, and we were a very important contributor to the gross national product of Chile and it was a very important part of their culture to continue.

We had a project and we still have a project in northern Chile by the name of La Copa and there was a new development that we brought on in the late 1990's called Chimberos, and this was a greenfields project. It took us about nine to twelve months to permit, and again full Environmental Impact Statement as is done here, but we went beyond in a couple of different areas.

There is a technical thing called acid basis accounting to determine whether there is any leachants that might leach out of the waste. That was not part of the Chilean requirement for the Environmental Impact Statement. We recognize that we operate internationally. We have to be held accountable for wherever we operate; therefore, we can't afford to cut corners, and that is why we did that and other things in the Environmental Impact Statement to make sure that we were comfortable with what we were doing.

Frankly, and quite surprisingly, the next time we go to permit, those issues will be part of the next permitting process, so while there may be some areas that other countries are not as completely knowledgeable about, they are learning quickly and they will be right up to speed with the mining company's help to get there.

Mr. JEANNES. If I can address the second question, certainly, no, the price of gold obviously impacts how much we can afford to spend on exploration generally and how much we can spend in discretionary spending to try and find new growth for our business, but where we spend it is entirely dependent upon the kind of risks and business decisions that we make as to where is the best way to spend our money.

And as I mentioned, we have an operation in Nevada, we have an operation in California, and we do have some expansion of our Marigold Mine in Nevada that is underway, but from a grass root standpoint trying to find something brand new and take it from discovery to permit and then construction with the kinds of policies

that we have talked about today, we do not believe that the U.S. is the best place to do business.

Chairman GIBBONS. One final question, and I want to turn to Ms. Laney for this question. You mentioned in your testimony the duplication of regulatory requirements, permitting requirements from both the state and the Federal level. Could you maybe expand a little bit about that duplication and let us in the audience and those of us sitting up here be a little more familiar with what duplications you are talking about, if you could?

Ms. LANEY. Sure. I think what it is, there are already many standards that the Federal Government has set, many standards that Nevada has set through air quality and water quality.

Some of the changes that are being talked about in 3809 want to set standards again that are already being taken care of for air quality and water quality. And if we already have rules and regulations in place, it is just enforcing those and making sure that all of those are followed, not putting two different rules on.

Nothing was said at all about any of the Federal or state rules already being in place. It was almost like they didn't know they were there and asking us to do it all over again.

The National Academy of Sciences found that those rules and regulations from the Federal Government and the State Government were already comprehensive enough to cover everything, and so it is on the air quality, water quality, and those issues that were showing duplicative rules.

Chairman GIBBONS. So you are saying that the new 3809 regulations, and I don't mean to take your testimony and change it, but the 3809 regulations would permit the Bureau of Land Management or anyone in the Forest Service to add standards to air quality, water quality, and other environmental issues which could in fact be different from the National Environmental Protection Agency, any of the other standards that are already established by states, so it would be a third set of standards?

Ms. LANEY. Correct. And the other thing, too, is the comment had been made in there that possibly the old rules and regulations don't keep up. Well, there is always items being done for clean air and water. Those standards are updated all the time through the Federal and State regulations already, so it is a growing and changing thing.

And as new things are discovered, and new methods of measurement and analytical detection limits, things change, and so it is a dynamic thing as far as water quality and air quality and as we learn more and have better instruments for detection of things, these are being updated, so it isn't a stagnant document and there already are rules in place that should be used.

Chairman GIBBONS. Let me thank all of you for your presence here today. I don't mean to cut anybody off from adding any comments to this and would say that we may have questions of any member of the panel after this hearing. We will submit those questions to you in writing, and if you would respond appropriately we would greatly appreciate that.

And we would also like to ask that if any of you have comments with regard to improvements that you feel would be important to the 3809 regulatory changes that are out there that are now in

open hearing process for those changes, if you would care to submit them for our review to take a look at, we would appreciate hearing from you with regard to your comments on the 3809 regulations that are now open for public comment as well. With that, ladies and gentlemen, let me thank you and I appreciate your time and patience for being here.

And we would like to now call up our third panel, Mr. Dave Gaskin, Chief of Bureau of Mining Regulation and Reclamation, Nevada Division of Environmental Protection; Mr. Tom Myers, Director of Great Basin Mine Watch; Mr. Borden Putnam, Principal of RS Investments Management, and Mr. Jonathan Price, Director/State Geologist, Nevada Bureau of Mines and Geology.

Gentlemen, while you are getting comfortable, I do not believe I need to remind you of the egg timer rule in our Committee and the fact that we try to keep our comments within a certain time frame, not necessarily to the minute or to the second.

We certainly would advise you that if you wish to submit your complete written testimony to the Committee, you may do so and then take this 5 minute time frame to paraphrase and make extraneous comments as you may wish that you feel are important for this Committee to hear as such. We begin now with Mr. Gaskin, welcome to our Committee. The floor is yours. We look forward to your testimony.

STATEMENT OF DAVE GASKIN, CHIEF, BUREAU OF MINING REGULATION AND RECLAMATION, NEVADA DIVISION OF ENVIRONMENTAL PROTECTION

Mr. GASKIN. Thank you, Congressman Gibbons. My name is Dave Gaskin. I'm Chief of the Bureau of Mining Regulation and Reclamation with the Nevada Division of Environmental Protection, NDEP.

The mission of our Bureau is to insure that waters of the state are not degraded by mining operations, and to ensure that land disturbed by exploration and mining are properly reclaimed and returned to a productive post-mining land use. Our jurisdiction extends to all private and public lands in the State.

As you are well aware, the majority of mining operations in Nevada involve public land to some extent. In the course of regulating mining activities in the State, NDEP must work closely with the Federal land managers, USDA Forest Service, and the Bureau of Land Management. We try hard to work together as fellow regulators and to enhance cooperation and communication between our agencies. Our reclamation regulations were crafted to be consistent with BLM's 3809 regulations, and we strive to avoid duplication and conflict with the Federal agencies whenever we can.

We have even instituted a Federal liaison position on our staff. This person works half the time in our office and half the time in the State office of the BLM. Nevertheless, there are many challenges posed by this joint regulatory arrangement.

The State of Nevada has closely monitored BLM's efforts to rewrite the 3809 regulations. We commented extensively regarding problems we saw with the proposed changes during the review and revision process. We worked closely with the Western Governors' Association and the National Academy of Sciences in an attempt to

keep BLM focused on areas that warranted change and areas that fall clearly under regulatory authority. I'm sorry to say that we were unsuccessful, and finally the State of Nevada was forced to resort to legal action when the administrative process failed to prevent implementation of the new regulations.

During the 3809 revision process, a great deal of contention arose over the interpretation of consistency with the National Research Council recommendations and over the proper scope and content of revision. The position of the State of Nevada is that the revised version of the 3809 regulations is not consistent with the findings and recommendations of the NRC.

Due to the fundamental and extensive changes made to 3809 to reach the final version, it would be extremely difficult and impractical to modify the new regulations to achieve consistency. Even if BLM were to propose new regulations in accordance with the Alternative 5 in the EIS, there are a number of critical issues that would cause conflict and would need to be resolved prior to promulgation of a final rule. These conflicts are due to differences in interpretation of the NRC report.

Therefore, the State of Nevada is recommending that BLM suspend the final regulations published on November 21st, 2000 and reinstate the rules that were in place on January 19th, 2001. Once the previous version is reinstated, the State of Nevada would work with BLM and the other stakeholders to develop selective modifications to address the NRC recommendations.

At the State regulatory level, we are facing many of the same problems and challenges that BLM is struggling to deal with. Increasing uncertainty in environmental requirements and continued low metals prices have led to severe stress on the security and resources of mining operators.

At the same time, this stress provides an opportunity to detect weaknesses and correct problems in our regulatory system. Over the past few years we have made significant changes at the State level to address recent concerns in mining regulation.

We revised our regulations to allow us to require financial assurance for process fluid stabilization, not just physical reclamation. We established an Interim Fluid Management Trust Fund to address urgent fluid issues in the event of abandonment of mining operations. We are currently in the process of reevaluating and revising our policy on corporate guarantees to prevent undue financial risk to the State and to the public. This is not an extremely pleasant time for many of us, but I'm hopeful that we will emerge from this stressful period with a much better regulatory system than we had 5 years ago.

The NRC report emphasized that the existing regulatory system is generally effective, and the best way to improve the system is to make better use of existing authority while making selective changes where needed. Through the recent proposal to suspend the new 3809 regulations, the new Administration in Washington has sent the message to us that they will listen and consider seriously our concerns and recommendations.

Working together as fellow stakeholders, with open communication and cooperation we can develop rules which avoid duplication, conflict and needless adverse impacts. We will work with BLM to

devise a regulatory system which works in concert with state, local and other Federal agencies to protect the environment while allowing responsible development of our natural resources. Thank you.

[The prepared statement of David Gaskin follows:]

Statement of David Gaskin, Bureau Chief, Bureau of Mining Regulation and Reclamation, Nevada Division of Environmental Protection

Madam/Mr. Chairman and members of the Subcommittee, my name is David Gaskin, and I am Chief of the Bureau of Mining Regulation and Reclamation, with the Nevada Division of Environmental Protection (NDEP). The mission of my bureau is to ensure that waters of the State are not degraded by mining operations, and to ensure that land disturbed by exploration and mining are properly reclaimed and returned to a productive post-mining land use. Our jurisdiction extends to all private and public land in the State.

As you are well aware, the majority of mining operations in Nevada involve public land to some extent. In the course of regulating mining activities in the State, NDEP must work closely with the Federal land managers: USDA Forest Service and the Bureau of Land Management. We try hard to work together as fellow regulators, and we even provide funding for a Federal liaison position. This person works half the time in our office and half the time in the State Office of the BLM, and endeavors to enhance cooperation and communication between our agencies. Our reclamation regulations were crafted to be consistent with BLM's 3809 regulations, and we strive to avoid duplication and conflict with the Federal agencies. Nevertheless, there are many challenges posed by this joint regulatory arrangement.

The State of Nevada has closely monitored BLM's efforts to rewrite the 3809 regulations. We commented extensively regarding problems we saw with the proposed changes during the review and revision process. We worked closely with the Western Governors' Association and the National Academy of Sciences in an attempt to keep BLM focused on areas that warranted change, and areas that fall clearly under BLM's regulatory authority. I'm sorry to say that we were unsuccessful, and finally the State of Nevada was forced to resort to legal action when the administrative process to prevent implementation of the new regulations failed.

Our lawsuit contains three major points: 1) The new 3809 regulations are contrary to law because they violate the statutory requirement that they be "not inconsistent with" the recommendations of the NRC Report; 2) The new regulations are in excess of BLM's statutory authority under the Federal Land Policy Management Act, especially in allowing BLM to disapprove a mining plan of operations if the agency determines that it would result in "substantial irreparable harm," even though the operation would comply with all Federal and state environmental and reclamation requirements; and 3) BLM violated key procedural requirements under NEPA and other Federal administrative requirements during the revision process.

Throughout this lengthy process, states including Nevada have questioned repeatedly the need for sweeping reform of the existing regulations. Our position has been that selective regulatory reform, combined with enhanced utilization of existing authority would be a much more preferable and effective course of action. The National Research Council (NRC) of the National Academy of Sciences, with the support of many states and Congress, provided expert and impartial analysis of the effectiveness of the existing Federal regulatory framework. The NRC developed specific recommendations for the coordination of Federal and state regulations to ensure environmental protection, increase efficiency, avoid duplication and delay, and identify the most cost-effective manner for implementation.

During the 3809 revision process, a great deal of contention arose over the interpretation of "consistency" with the NRC recommendations, and over the proper scope and content of revision. The position of the State of Nevada is that the revised version of the 3809 regulations is not consistent with the findings and recommendations of the NRC. Due to the fundamental and extensive changes made to 3809 to reach the final version, it would be extremely difficult and impractical to modify the new regulations to achieve consistency. Even if BLM were to propose new regulations in accordance with Alternative 5 in the EIS, there are a number of critical issues that would cause conflict and would need to be resolved prior to promulgation of a final rule. These conflicts are due to differences in interpretation of the NRC Report.

Therefore, the State of Nevada is recommending that BLM suspend the final regulations published on November 21, 2000, and reinstate the rules that were in place on January 19, 2001. Once the previous version is reinstated, the State of Nevada

would be pleased to work with BLM and other stakeholders to develop selective modifications to address the NRC recommendations.

At the State regulatory level, we are facing many of the same problems and challenges that BLM is struggling to deal with. Increasing uncertainty in environmental requirements and continued low metals prices have led to severe stress on the security and resources of mining operators. At the same time, this stress provides an opportunity to detect weaknesses and correct problems in our regulatory system. Over the past couple of years, we have made significant regulatory changes at the state level to address recent concerns. We revised our regulations to allow us to require financial assurance for process fluid stabilization, not just physical reclamation. We established an Interim Fluid Management Trust Fund to address urgent fluid issues in the event of abandonment of mining operations. We are currently in the process of reevaluating and revising our policy on corporate guarantees, to prevent undue financial risk to the State and to the public. This is not an extremely pleasant time for many of us, but I am hopeful that we will emerge from this stressful period with a much better regulatory system than we had five years ago.

The NRC Report emphasized that the existing regulatory system is generally effective, and the best way to improve the system is to make better use of existing authority while making selective changes where needed. Through the recent proposal to suspend the new 3809 regulations, the new Administration in Washington has sent us the message that they will listen and consider seriously our concerns and recommendations. Working together as fellow stakeholders, with open communication and cooperation we can develop rules which avoid duplication, conflict and needless adverse impacts. We will work with BLM to devise a regulatory system which works in concert with state, local and other Federal agencies to protect the environment while allowing responsible development of our natural resources. Thank you.

Chairman GIBBONS. Thank you very much, Mr. Gaskin.

Mr. Myers, excuse me, I should say Dr. Myers, welcome.

Mr. MYERS. It doesn't matter.

Chairman GIBBONS. Director of Great Basin Mine Watch. The floor is yours. We look forward to your testimony.

STATEMENT OF TOM MYERS, PH.D., DIRECTOR, GREAT BASIN MINE WATCH

Mr. MYERS. Congressman Gibbons, thank you for the opportunity to testify before you and the Subcommittee. My name is Tom Myers and I am the Director of the Reno based mining conservation advocacy group, Great Basin Mine Watch.

Great Basin Mine Watch is a regional conservation group operating in six western states. We try to use high quality science, environmental law and advocacy to preserve water, air, pristine lands, communities and cultural resources while supporting a strong, diversified economy that includes a healthy hardrock mining industry. That industry should be fully subject to the free market with all of the subsidies from essentially free use of the public land to pollution eliminated.

We support the claim maintenance fee because it eliminates speculation and avoids degradation of the public lands. The fee basically internalizes the cost of the BLM's administration of the mining program. Without the fee the program would need to be funded by Congressional appropriations, and we note that it is a part of President Bush's budget for 2002 and he recommends its continuation until the year 2006.

Regarding the fee impact, the State of Nevada concluded it was by far the least important issue concerning companies with budgets exceeding 1,000, excuse me, one million dollars and fourth from the bottom for companies, or for smaller companies.

Regarding the new 3809 regulations we do support them, perhaps most controversially the regulations would codify the BLM's current authority to deny a mine that would cause irreparable harm. The BLM estimated decreased levels of mining in Nevada ranging up to 350 million dollars. That is a lot of money.

The only way, however, in our opinion that Nevada would actually see a decrease in mining is if the BLM actually denies a mine. It is our opinion that denial would be very rare and would occur only in the most pristine areas with low value or where the proponent cannot afford the costs of meeting performance standards or where the mine would destroy a significant Native American site.

In fact, of the mines I have reviewed on BLM lands in Nevada, I can think of no facility where we would have totally opposed construction of the project and tried to force the BLM to say no under the irreparable harm standard, and for the record we would have opposed construction of several Forest Service mines, and we do oppose the Imperial Project and the Yarnell Project that we have discussed earlier, but in Nevada while we have filed some appeals, we would not have, they were not, the objective of those appeals was never to completely stop the facility.

We do acknowledge that there is a problem in the current system whereby a company can spend tens of millions of dollars in exploration only to be told no. I would commit to working with anyone in this room to come up with a standard or remedy to avoid that kind of commitment of funds and then having the problem of being told no in the future.

However, many of the mines, some of which we have appealed, should have had much more stringent environmental performance standards regarding dewatering and water pollution control. My written testimony mentions a few instances of pollution that in our opinion could have been prevented or reduced had the new regulations been in effect.

By emphasizing source control over monitoring and treatment, the new regulations will ultimately save the industry millions of dollars. The new regulations would also change the watering in our opinion by requiring that the impact be minimized. Discharge to surface water, reinfiltration into the wrong aquifer, and growing alfalfa in no way minimizes the impacts. A combination of reinfiltration, reinjection and grouting does. Minimizing these impacts would cost approximately $18 an ounce.

The bonding regulations are needed to decrease, to increase the BLM's authority to improve existing bonds and eliminate corporate guarantees. According to an independent mining engineer, current estimates of underbonding in Nevada are approximately 20 to 100 percent with a potential public liability of 96 to 480 million dollars. The underbonding is less in Colorado with a potential public liability of 20 to 50 million dollars. I had that in there because I thought there was going to be a Congressman from Colorado here, I'm sorry.

In closure I would like to say a few words about President Bush's proposed budget, because it affects the mining industry as much as anything in the proposed rules. The U.S. Geological Survey is going to take a 21 percent hit in the Water Resources Division with ten million dollars taken from its Toxic Substances Program.

The BLM and the mining industry use this information every time they prepare a NEPA document. When the BLM requires data to assess a Plan of Operations, it can either use the USGS data or it can ask the industry to go spend two or 3 years collecting it. They have to have it, so it is, we should have this funding restored.

I would also note that the Toxic Substances Program is that which will be used to test the uranium in wells near Fallon. Thank you for considering my testimony and I see my timing was perfect. I would be happy to answer any questions when we are done.

Chairman GIBBONS. Thank you very much, Dr. Myers.

[The prepared statement of Tom Myers follows:]

Statement of Tom Myers, Director, Great Basin Mine Watch

Chairwoman Cubin, members of the Subcommittee, my name is Tom Myers. I am Director of the Nevada based mining advocacy group Great Basin Mine Watch. Great Basin Mine Watch has several hundred members, mostly Nevadans, who are concerned about the impacts caused by the hardrock mining industry on the public's land. We support a strong, diversified economy in which hardrock mining plays an important part. We also support regulations and policies which require the mining industry to internalize their environmental costs.

Thank you for this opportunity to testify on an issue of immediate concern to all of our members and the citizens of the State of Nevada and the United States: mining fees and the effects of the new regulations.

Claim maintenance fees have protected the public's land

As a part of their 1993 appropriations bill, Congress allowed the BLM to start collecting a $100 per year per claim fee on mining claims as a part of their appropriations. This was a two-year authorization. During the 1994 appropriations process, the fee was reauthorized through September, 1998 and an additional $25.00 location fee was added. Finally, the 1998 appropriations reauthorized both fees through September, 2001. These fees are in addition to the $10 recording fee authorized by the Federal Lands Policy and Management Act in 1976. President Bush's current budget proposal calls for renewal of the claim maintenance fee at $100/claim/year.[1]

The maintenance fees (originally called a rental fee) replace the requirement for the claimholder to perform $100 of development on the claim. Prior to mining, the development was for exploration on the site. Annually, the claimholder would provide to the BLM a signed affidavit that they had completed this work. In 1872 when $100 was a substantial investment, only a serious miner would hold claims. At today's prices, a claims holder can barely drive his pickup truck to the site for $100. Doing so just damaged the land through off-road vehicle traffic.

The fee legislation provided for a small miner exemption: anyone holding less than ten claims could continue to perform maintenance on the site. From September, 1998, through August, 1999, 4000 small miner waivers were issued in Nevada.[2] Anyone truly impacted by the fee could get an exemption.

The money collected from these fees goes directly to the mining law administration budget of the BLM. It is deposited in a special account from which Congress appropriates to the program in the BLM. Any additional fees go to the Federal Treasury to help balance the budget. The following table shows the amount of money paid nationally for claim maintenance and location fees and the appropriation to the BLM from this fund.[3]

Fiscal year	Fees collected	Appropriations
1993	$53,200,000	.....
1995	30,700,000	$28,500,000
1996	33,800,000	28,500,000
1997	35,800,000	32,500,000
1998	30,000,000	32,500,000

[1] The Budget for Fiscal Year 2002, page 548.
[2] Id., note 6, at 7.
[3] Roger Haskins, BLM Washington Office, 5/13/99, personal communication.

In FY 1998, the claim brought in $13,387,600 in Nevada alone.[4] As the table illustrates, the fee provides an important revenue stream that pays for the administration of the program. As mentioned, President Bush's current budget proposal calls for renewal of the claim maintenance fee at $100/claim/year). "(1) In section 28f(a), by striking the first sentence and inserting, 'The holder of each unpatented mining claim, mill, or tunnel site, located pursuant to the mining laws of the United States, whether located before, on or after the enactment of this Act, shall pay to the Secretary of the Interior, on or before September 1 of each year for years 2002 through 2006, a claim maintenance fee of $100 per claim or site.'"[5] Interestingly, the President also expects claims to increase from 216,000 in 2001 to 280,000 in 2002[6] with expected revenue to be $32,298,000.[7]

The President recognizes the importance of this fee. Great Basin Mine Watch supports making the fee permanent so that the taxpayer is never required to pay this program. Without some source of funding, the public lands will be damaged and the BLM will not be able to fairly administer the Mining Law which will be a negative deterrent to the efficient development of the nation's mineral resources.

Who opposes this fee? For large companies, the amount is a mere blip on their annual budget. According to the State of Nevada, the Federal claim maintenance was by far the least important issue concerning companies with budgets exceeding $1,000,000.[8] For smaller companies, the maintenance fee is more important, but still ranks in the bottom four of eleven factors surveyed and on a scale of 1 to 10 was rated less than 5.[9] Of the three factors rated less important, one, changes in foreign laws, would be irrelevant to most small companies. The other two, land exchanges and wilderness study areas, have little effect because they just delineate areas that may be explored. In fact, land exchanges have resulted in increased exploration activity.[10]

The current maintenance fee primarily affect holders of non-producing Federal mineral claims. They represent only a tiny part of the overall costs of an operating mine. For non-producing claims, rental or maintenance payments can be avoided by simply abandoning those claims that have little prospect of profitable near term development. In 1993 in Nevada, the number of registered claims dropped from 258,000 on February 28 to 125,700 claims on September 1 while nationally claims dropped from 760,000 to 294,000.[11] This suggests that many claims being held prior to the commencement of the fee were non-producing. Since the burden of these payments does not fall on operating mines with substantial employment, the employment impacts are likely small or non-existent. Suggestions that the dropped claims somehow represents a decrease in exploration are completely specious; any drop coinciding with the changed claims is likely due to changed commodity prices.

If mining claims are abandoned because profitable future development is not imminent, those minerals are not lost. As economic conditions change and mining of that land becomes viable, claims could be filed again. The primary impact of these rental charges is to discourage the indefinite holding of claims to minerals on Federal lands for speculative (as opposed to production) purposes. No substantial negative employment or revenue impact can be attributed to this.

In conclusion, the only people really hurt by this fee are speculators. These are people who stake multiple claims in a minerals rich area in hopes of mining the legitimate mining companies who would rather buy out a claim than challenge its validity before the Appeals Board or in the courts. These speculators may not have the money to pay the annual fees and they probably filed fraudulent maintenance reports prior to 1993.

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[4] Steward, L., BLM NV State Office, 5/12/99, personal communication.

[5] The Budget for Fiscal Year 2002, page 548.

[6] Id., at 536.

[7] Your Tax Dollars and the Public Lands, a BLM Press Release.

[8] Driessner, D., 2000. Nevada Exploration Survey 1999. Nevada Division of Minerals. Carson City. Graph 8, at 18,

[9] Id., Graph 9, at 19.

[10] In the Pequop Mountains of northeastern Nevada, once a completed land exchange was open to activities under the Mining Laws, an exploration company immediately filed a large plan of operations. Great Basin Mine Watch argues that the BLM should not have permitted this exploration because they had never completed required resource surveys as required by the Federal Lands Policy Management Act.

[11] Haskins, note 1.

New mining regulations are essential for protecting the environment and State and Federal treasuries

The most obvious recent policy change is the new 3809 regulations, if they are not repealed. Great Basin Mine Watch strongly supports the new regulations.[12] We primarily support the regulations because they strengthen bonding requirements, institute minimal environmental performance standards, eliminate notice level mines, and finally allow the BLM to deny a mine that would cause "irreparable harm".

The new bonding regulations will help to prevent costs from accruing to the public. The following is a partial list of mining companies and the amounts of their secured and unsecured bond that have recently gone bankrupt on BLM lands in Nevada.[13]

Company	Secured bond	Unsecured bond
Alta Gold Company	$3,976,062	.....
Arimetco, Inc	1,414,000	$4,236,831
Atlas Gold Mining, Inc	3,192,378	.....
Homestead Minerals Corp	124,017	501,121
Jumbo Mining Company	3,700	.....
McNamara Buick-Pontiac, et al	.....	8,000
Mineral Ridge Resources, Inc	1,640,086	0
Mountain Mines, Inc	.....	.....
Pruett Ranches	154,364	58,770

While some of the mines have secured bonds, it is likely that most of the amounts are insufficient because most of the money goes to fluids management to prevent heaps from overflowing or tailings impoundments to leak. Portions of the reclamation bond dedicated to heap stabilization are insufficient at this point because they are not designed to both manage and close a heap. For example, we understand that just pumping the fluids through the heaps at the bankrupt Olinghouse and Mineral Ridge Mines cost $80,000 and $50,000 per month, respectively. Because the bonds for these facilities was only 1.8 and 1.6 million, respectively, it is easy to see that several months of fluids management that does not lead to ultimate detoxification uses substantial portions of the bond. Too often, the costs for fluids management decrease the ability of the agency to reclaim other parts of the mine. The bankruptcy closure fund proposed in Nevada will be grossly insufficient if more than one mine goes bankrupt at the same time because of the costs of pumping water through heaps. The new 3809 regulations provide for bonding for interim stabilization in addition to long-term closure.[14]

If the BLM requires full bonding, the public will be protected from substantial liability. One independent study indicated that westwide the public was potentially liable for up to $1 billion in costs due to defaults on underfunded bonds and unsecured bonds. The following table documents the potential costs born by the public due to underestimated bonds and corporate guarantees:

State	Range of underestimate (percent)	Range of public liability ($ millions)	Corporate bonds	Liability due ($ millions)
Arizona	50–200	73–292	438	.....
California	50–200	17–68	.....	.....
Colorado	20–50	20–50	.....	.....
Idaho	50–400	20–160	.....	.....
Montana	10–25	20–50	.....	.....
Nevada	20–100	96–480	360	.....
New Mexico [1]	.....	.....	.....	.....
Oregon [2]	.....	.....	.....	.....

[12] Great Basin Mine Watch has joined with the Mineral Policy Center and Guardians of the Rural Environment in litigating to improve the regulations and intervening in the litigation promulgated by the National Mining Association to protect the regulations' desirable aspects.

[13] Personal communication, Nevada State Office, Bureau of Land Management, 3/30/00. Updated information is that no new bankruptcies on land managed by the BLM in Nevada has occurred.

[14] 43 CFR § 3809.552. "The financial guarantee must also cover any interim stabilization and infrastructure maintenance costs needed to maintain the area of operations . . . while third-party contracts are developed and executed.

State	Range of underestimate (percent)	Range of public liability ($ millions)	Corporate bonds	Liability due ($ millions)
South Dakota	20–50	6.2–15.4	.....	.....
Utah	20–100	10.2–50.0	.....	.....
Washington	50–100	5.0–10.0	.....	.....
Wyoming [2]	.....	.....	.....	.....

[1] Unknown due to new bonding regulations.
[2] No major hardrock mines.

The estimates are based on a report funded by the National Wildlife Federation.[15] The estimates are based on case studies using industry standards compared with actual reclamation cost estimates. The report found that:

> The estimated costs for nearly identical tasks can vary significantly between states. The lowest estimated reclamation costs exist in those states and on Federal land where the statues and regulations are general and limited in scope, and afford the regulators substantial discretion as to their interpretation and application. This observation becomes even more dramatic where industry political influence has resulted in apparent underestimation of reclamation costs.[16]

In other words, the report suggests that states where the regulators have more discretion tend to be underbonded. Regarding Nevada, the report found that "[r]eclamation planning . . . fails to adequately address recontouring, hydrology, water quality and geochemical—acid mine drainage consideration, and fails to consider public safety, wildlife habitat, and aesthetic considerations".[17] It also found that the limitation requiring reclamation to be "economically and technologically practicable" severely limits the state's abilities.[18]

The environmental performance standards are the most important of the new regulations. These regulations will help to protect the public's resources from mining while not imposing undue costs on the industry. I will provide just two examples of how the regulations would affect mining in Nevada and how this will affect industry or governmental budgets.

Great Basin Mine Watch has documented many currently operating or closing mines that are currently or have polluted groundwater. For the purpose of this analysis, we only consider mines with monitoring reports showing that contaminant concentrations exceed state standards and where this exceedence is not due to background levels. To be counted as background, the concentrations must have been high at the beginning of mine operations and must not have had spikes which would be due to the mine. The following is a partial list of mines with exceedences based on data obtained from the Nevada Division of Environmental Protection:

Battle Mountain Complex*
Marigold*
Pipeline Deposit**
Cortez
Toiyabe
Yerington***
Rain****
Twin Creeks
Paradise Peak
Calvada

*The BLM has documented in their NEPA documents for expansion projects at these facilities the ongoing degradation.

**Some of the degradation at this facility has occurred because the reinfiltration of dewatering water leaches salts from the unsaturated zone into the alluvial groundwater.

***The Yerington Mine is being considered for Superfund designation by the Environmental Protection Agency. Some of the contamination at this facility occurred prior to 1980, but there have been plan changes under which the BLM would have been more aggressive at cleaning the site.

[15] Kuipers, J.R., 2000. Hardrock Reclamation Bonding Practices in the Western United States. Center for Science in Public Participation, Boulder, MT. Mr. Kuipers is a mining engineer with over 20 years of experience in millsite management and reclamation.
[16] Id., Summary Report, at 2.
[17] Id., Nevada Bonding Program Summary, at 2.
[18] Id., at 3.

**** Contamination at the Rain Mine consists of seepage from waste rock and tailings that may be discharging into a surface water source. The Nevada Water Pollution Control permit for this facility is currently under appeal by Great Basin Mine Watch.

Other mines on Forest Service land also have degraded groundwater. Other mines, including Gold Quarry and Lone Tree, have surface water discharges that exceed their permit requirements.

An additional very serious problem concerning the public's resources centers on the tendency for a mine to discharge its' heap draindown and seepage into the ground near the mine. The State of Nevada allows this when depth to groundwater is substantial. Often, mines are discharging millions of gallons of water with contaminant levels exceeding 100 times the state drinking water standard for mercury, arsenic, selenium and silver. The Candelaria Mine is the best example: [19]

> The Candelaria Mine is located approximately 55 and 16 miles southwest of Hawthorne and Mina, NV, totally on public land. The mine began production during November, 1980. While there were occasional shutdowns, the mine operated until January, 1997 and final metal recovery from the heaps occurred in January 1999. During this time, the operator created two leach pads. LP–I covers 136 acres and contains approximately 25,000,000 tons of ore while LP2 covers 70 acres and contains approximately 14,000,000 tons of ore. EA at 1. The heaps were leached with a cyanide solution to remove the gold and silver from the ore. When formal leaching ended, the heaps contained cyanide solution and metals that were leached from the ore but not recovered in the cyanide circuit. After the end of leaching, the operator began to recirculate the water in the heaps. The BLM estimates that at the end of this recirculation, the initial draindown was anticipated "to consist of about 95.8 million gallons from leach pads LP–1 and LP–2." EA at 10. Draindown is the contaminated fluids remaining in the heap after rinsing that moves to the bottom of the heap with time. The majority of these fluids are expected to drain during the first and will be infiltrated into the soil through "initial infiltration fields" designed to accept high quantities of water. EA at 14. The amount depends on the time that rinsing ends and the amount of the heaps that were being rinsed at that time. Portions of the heaps no longer being rinsed have had unspecified time periods for water to drain. The rate of draindown is very uncertain.
>
> Residual draindown from 2000 to 2011 will equal about 44,000,000 gallons while long-term seepage will equal about 2,300,000 gallons per year. EA at 10. This will be infiltrated in "residual infiltration fields". EA at 14.
>
> Water quality of the draindown was very poor during 1999. Because recirculation has ended, the water quality will remain the same for the duration of draindown. During 1999, the water proposed to be infiltrated exceeds State of Nevada primary and secondary drinking water standards for 13 contaminants as shown below. The totals are the amount of contaminants proposed to be stored in the soil for initial, residual, and annual seepage conditions for both heaps (assuming arithmetic averages of flow from heaps LPI and LP2).

Parameter	NV MCL (mg/1)	LPI (mg/1)	LP2 (mg/1)	Initial mass (tons)	Residual mass (tons)	Seepage mass (tons/year)
Antimony	0.006	0.149	0.068	0.043	0.020	0.001
Arsenic	0.05	6.487	2.430	1.782	0.819	0.043
Chloride	250–400	456	522	195.5	89.78	4.693
Manganese	0.05–0.1	2.5	5.63	1.625	0.746	0.039
Mercury	0.002	0.27	0.07	0.068	0.031	0.002
Nickel	0.1	11.12	15.59	5.339	2.452	0.128
Nitrate-N	10	42.48	49.43	18.37	8.437	0.441
pH	6.5–8.5	9.47	9.35	.....	.....	.....
Selenium	0.05	0.411	0.258	0.134	0.061	0.003
Silver	0.1	8.628	6.328	2.989	1.373	0.072
Sulfate	250–500	5471	8721	2836	1302	68.10
TDS	500–1000	10149	13788	4784	2197	114.9
WAD cyanide	0.2	25.2	70.8	19.19	8.813	0.461

[19] The following description comes from the introduction to the Notice of Appeal for the closure plan filed by Great Basin Mine Watch. The reference to EA means the environmental assessment written for the Candelaria Mine Closure Plan. See IBLA No. 2000–366.

> The mass above represents only the amount expected to drain from the heaps. Because the fluids were recirculated and not detoxified, large amounts of contaminants remain in the heaps to be leached in the future. There are also contaminants in the ore that have not yet dissolved or been leached into the solution.

The BLM's new regulations would prevent the industry from discharging its waste in this way. "You must conduct operations affecting ground water, such as dewatering, pumping, and *injecting,* to minimize impacts on surface and other natural resources, such as wetlands, riparian areas, aquatic habitat, and other features that are dependent on ground water".[20] It is unlikely that, even if the contaminants will likely be attenuated in the unsaturated zone, the BLM would ever choose to allow this discharge because of the potential toxicity to soil ecosystems.

The other issue affected by the new regulations would be mine dewatering. By the end of mining, the excess of dewatering over reinfiltration plus the pit lake volume within the Humboldt River basin will be approximately 5,000,000 acre-feet.[21] Evaporation from pit lakes will be at least 3 [22] percent of the average surface water flow in the Humboldt River. The new regulations cover this by requiring that dewatering minimize impacts on other surfaces. Only by reinfiltration can the impacts of dewatering be minimized. We anticipate that the Gold Quarry, Lone Tree and Betze-Post Mines would be required to reinject their dewatering water and that the Pipeline Deposit mine would either have to reinject into bedrock or into the mountains upgradient from the mine. We indicate that reinjection would be necessary because it is from bedrock that most of the water is removed. Also, reinfiltration may, as has occurred at the Pipeline Deposit mine, leach salts from the alluvium and pollute underlying groundwater.

Considering dewatering, there is an economic and environmental cost to dewatering. During 2000, we prepared a report for the University of Nevada, Reno, titled "Economic and Environmental Impacts of Mining in Eureka County". It documents the amount of water pumped per ounce of gold produced. The following are relevant parts of the executive summary of that report: [23]

> Gold mining in Eureka County provides most of its current employment and tax dollars. However, mine dewatering may cause long-term deficits that will offset many of the current mining benefits. This report summarizes gold production, mining employment, dewatering rates, and water rights to assist in the assessment of the economic and environmental impacts of mining in Eureka County . . . .
>
> Total dewatering at mines in or potentially affecting Eureka County, including Newmont's Carlin operations, the Barrick Goldstrike property, and the Pipeline Deposit Mine, since 1990 has been approximately 954,000 af. Most of this is effectively lost to future use because of the method of disposal and the need for replenishing the created deficit. During this time, gold production in the county increased to greater than 3.6 million ounces per year and currently (1999) stands at about 3.1 million ounces. Newmont's Carlin operations and Betze-Post produced 16,300,000 and 12,500,000 ounces of gold, respectively. During the same time, Newmont and Barrick pumped 174,110 and 715,353 af of water, respectively. This is 93.6 and 17.5 ounces per af, respectively.
>
> In the future, Gold Quarry will pump 480,000 af to produce 13,716,000 ounces of gold, or about 28.6 af/ounce. At the Leeville Mine, Newmont will pump 200,000 af to produce 1,796,000 ounces, or 9.0 af/ounce. At the Betze-Post Mine, Barrick will pump 576,000 af to produce 21,200,000 ounces, or 36.8 af/ounce, over the next 18 years.
>
> After mining ceases, there will be a deficit created by dewatering which must be made up in the future. Deficits include the size of the pit lake and the pumpage volume that is lost to the system. Based on current and proposed projects, the total deficit in the Carlin Trend will be about

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[20] 43 CFR§ 3809.420(b)(2)(ii)(C), emphasis added.

[21] Myers, T., 1997. Groundwater management implications of open-pit mine dewatering in northern Nevada. In: Kendall, D.R. (Ed.), Conjunctive Use of Water Resources: Aquifer Storage and Recover. Proceedings AWRA Symposium, Long Beach, CA. October 19–23, 1997. This report documented 4,000,000 acre-feet of deficit. The additional 1,000,000 acre-feet results from the expansion of the pit at the Pipeline Deposit and increased pumpage at that mine and the Leeville Project. All other expansions had been accounted for in the original calculations.

[22] *Id.*

[23] Myers, T., 2000. Economic and Environmental Impacts of Mining in Eureka County. Prepared for Dept. of Applied Economics and Statistics, College of Agriculture, University of Nevada, Reno. Center for Science in Public Participation.

2,363,000 af. Adding the amount of deficit in the Pipeline Deposit Mine brings the total to 2,663,000 af. There are several smaller mines that have created small deficits in the Tuscarora Mountains which bring the total deficit in mines that may affect Eureka County to 3,000,000 af. Considering just the Carlin Trend, the ratio gold production to deficit is 27.6 ounces per af.

The best current estimate of the impacts of filling the long-term deficit is that river and stream baseflow will decrease by up to 10.4 cfs. But there are three major issues that policy makers must consider. Where will the deficit come from? Is it the same aquifer from which the dewatering was drawn? What is the rate of pit lake infilling? This is very sensitive to the hydrogeologic properties of the aquifers near the pit. Finally, what is the connection of these aquifers and the pit lake to surface water sources?

The most significant impacts to Eureka County water rights may be in Maggie Creek or Boulder Valley. However, there are limited surface water rights on Maggie Creek; in Boulder Flat, the impacts will mostly a decreased depth to water because of the infiltration and irrigation that has been occurring in the valley. The high water table may experience increased evapotranspiration and seepage to the Humboldt River is probably increasing. But there appears to be no deficit created by dewatering that will drain the aquifers in Boulder Valley. Groundwater rights in Crescent Valley could be affected. Currently, a mining company owns the bulk of the rights that could be affected and they propose to replace temporarily the certificated rights with dewatering water. Substantial impacts to any of the groundwater rights in Crescent Valley is not expected.

Eureka County's gold production does not come without costs, both economic and environmental. To produce a total 66,200,000 ounces of gold, over 2,145,000 af of water will have been pumped. A total deficit of about 3,200,000 af will have been created in the Carlin Trend area, most of it in Eureka County. This deficit will be refilled after mining ceases from somewhere. The complex hydrogeology of the area renders estimates of impacts very uncertain. However, it is certain that river and stream flows will decrease, potentially impacting Lahontan cutthroat trout and increasing water pollution levels, and pit lakes will form that may impact groundwater quality. The biggest problem may be that deficits are filling, causing their impacts on surface water flows, after the mines have ceased producing gold. Eureka County will be suffering most of the impacts at a time the county is not enjoying many of the benefits.

Not being an economist and because I provided this report to the Dept. of Applied Economics and Statistics at UNR, I did not perform any detailed economic analysis. In Las Vegas, recharge costs between $200 and $300 per acre-foot. Because it would be deeper in the Carlin Trend, costs may be closer to $400 or 500 per acre-foot. It is important to realize that most of the cost would be for digging the well as opposed to pumping the water; the height of the well would provide the required head. At $500 per acre-foot, in the Carlin Trend with 27.6 ounces of gold per acre-foot produced, the cost would be about $18.00 per ounce. This includes current pumping rates and project future rates for existing mines and the proposed Leeville Project.

At $18.00 an ounce, the effect on the industry would depend on gold prices. Some companies operate close to the margin; this additional cost might force them to postpone a project. However, most ranchers and certainly municipalities pay far more than this for an acre-foot of water. Because water that is pumped into the river or that flows into a pit lake is not available for future use, a rather small investment would assure water for the future.

Budget proposals will help and hurt the industry

President Bush proposes many changes in fiscal policy and administrative direction reflected in his budget that will affect the industry. Some of the changes are positive; others are negative. Some of the policies may cost the industry.

We note that regardless of budget levels proposed by the President, all environmental laws must be followed. Cutting the budget for enforcing the Endangered Species Act does not repeal the Act; it only increases the time for Fish and Wildlife Service to complete consultation. Decreasing the budget to enforce section 404 of the Clean Water Act will only slow the time for permit issuance. Agencies who approve projects with faulty permitting will only land themselves and the project proponent in court. This will lead to more delays and cost the mining industry much more than had they spent an adequate time in the first place. To paraphrase one of Murphy's Laws, "there's never enough money to get it right the first time, but there's always enough money to do it over". Doing it over will likely involve industry money.

One very specific concern that we have with the President's budget involves budget decreases for the U.S. Geological Survey. Of four USGS division, the Water Resources Division takes by far the largest decrease, 21.6 percent from $203.5 million in FY 2001 to $159.5 million in FY 2002.[24] The bulk of the reduction would be accomplished by eliminating the Toxic Substances Hydrology program (a $10 million cut)—despite the fact that it has generated significant information about the sources, fate, and persistence of toxic substances in ground and surface water—and reducing the National Water-Quality Assessment (NAWQA) program by $20 million, halting its next phase. These programs provide essential information to the land management agencies for decision making purposes. These data include the amount of various toxic materials in the rivers and streams of the West. Without this data, the BLM will have no choice but to require the mining industry, primarily the project proponent, to collect the data. This is because there is ample appellate rulings that force the BLM to return plans of operation to a
company for more data.[25] It would be unfortunate for the project proponent and the state revenue stream if the BLM required a 2 year delay in a potentially profitable project while the company collected data that the USGS would otherwise already have collected if not for these budget cuts.

Interestingly, these USGS programs are being cut because they primarily benefit entities outside the Department—including other Federal agencies, state and local government, and foreign governments. In the future, USGS is expected to seek funding from these partners who "rely on USGS to provide information to help them fulfill their own mission-critical responsibilities." It is the Environmental Protection Agency that routinely uses this information.

We are concerned about the decrease in funds available for mining law administration. With increasing questions about claim validity, it is essential that the BLM be adequately funded to more fully pursue questions of validity at each proposed mine. Failure to do so will cause the industry substantial delays.

We support the budget increases for resource protection. This should improve the BLM's National Environmental Policy Act implementation and decrease delays caused by BLM personnel being called to fight fires or administer fire restoration programs. It will also hopefully improve the BLM's ability to improve the oversight of NEPA documents. Over the past several years, we have read various documents which were poorly edited and contained simple factual errors.[26]

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[24] The Budget for Fiscal Year 2002, at 564. "A significant portion ($30.0 million) of the proposed decreases affects two USGS water quality programs that primarily benefit other Federal agencies and states. The National Water-Quality Assessment Program (NAWQA) and the Toxic Substances Hydrology Program provide extensive data and information to state and Federal regulatory agencies such as the Environmental Protection Agency (EPA). These entities rely on USGS to provide information to help them fulfill their own mission-critical responsibilities. The Department and USGS will work with EPA and other beneficiaries of both programs in an effort to obtain partnership funding to maintain current scope and schedule in both programs." USGS Press Release: President's FY 2002 Budget for USGS—Contributions to Energy Security and America's Environment

[25] First of all, the mere filing of a plan of operations by a holder of a mining claim invests *no* **rights** in the claimant to have any plan of operations approved. Rights to mine under the general mining laws are **derivative of a discovery of a valuable mineral deposit** and, absent such a discovery, **denial of a plan of operations is entirely appropriate** . . . .

Moreover, in determining whether a discovery exists, the costs of compliance with all applicable Federal and State laws (including environmental laws) are properly considered in determining whether or not the mineral deposit is presently marketable at a profit, i.e. whether the mineral deposit can be deemed to be a valuable mineral deposit within the meaning of the mining laws . . . **If the costs of compliance render the mineral development of a claim uneconomic, the claim, itself, is invalid** and any plan of operations therefore is properly rejected. Under **no circumstances** can compliance be waived merely because failing to do so would make mining of the claim unprofitable. Claim validity is determined by the ability of the claimant to show that a profit can be made *after* accounting for the costs of compliance with all applicable laws and, where a claimant is unable to do so, BLM must, indeed, reject the plan of operations and take affirmative steps to invalidate the claim by filing a mining contest.

Finally, insofar as BLM has determined that it **lacks adequate information** on *any* **relevant aspect** of a plan of operations, BLM not only has the authority to require the filing of supplemental information, it has the obligation to do so. We **emphatically reject any suggestion that BLM must limit its consideration of any aspect of a plan of operations to the information or data which a claimant chooses to provide.** Great Basin Mine Watch, et al., 148 IBLA 248, 256. Bolded emphases added, italics in original, citations omitted.

[26] The draft environmental impact statement for Newmont's South Operations Area expansion is the best example of this. In our letter to the BLM regarding this DEIS, we documented numerous problems with technical editing including places where statements in one section did not match statements in other sections. In just one section of our letter, we point out the following:

However, we have concerns over the budget reductions for both wildlife and fisheries management and threatened and endangered species management. Because even the old 3809 regulations require the BLM to comply with the Endangered Species Act, reducing the budget for consultation will result in unnecessary delays. In Nevada where the Lahontan cutthroat trout is potentially affected by mine dewatering and where the goshawk and sage grouse may soon be listed, these cuts are short sighted and will hurt mine permitting and wildlife management.

Conclusion: Claim maintenance fees and new regulation are needed to protect the environment

Much of this testimony has dealt with the costs to the industry of the BLM's claim fees, costs perceived to be caused by new regulations, and the impacts of the President's budget proposals. The threat is always that mining and exploration will move overseas; that America will have to import its minerals because companies cannot afford to do business here any more.

In recent months, overseas regulatory issues have arisen that indicate just how unlikely it is for the mining industry to move overseas soon. The beleaguered and corruption ridden Indonesian government cannot begin to finalize mining regulations, therefore Newmont has stopped exploring there because of "the lack of a clear legal framework and mining investment policy. [27] In South Africa, regulatory reform designed to "redress a century of white dominance of the industry" would "give mineral resources to the state".[28] Along with Nevada, South Africa is one of the world's largest producers of gold. Newmont and the rest of the industry probably do not want their investment to be nationalized or stripped from them in countries that do not have constitutionally protected property rights as the U.S. does.

While investment and exploration, along with governmental revenues, will wax and wane, the number one factor will continue to be commodity prices. Neither maintenance fees nor regulations will have any effect on prices. In fact, if regulations actually do reduce production, which in our opinion is a dubious outcome, the supply decrease should increase prices. If gold ever returns to $400 or $600 an ounce, the massive increases in exploration and production in Nevada will eliminate all of the industry's concerns about fees and regulations.

Chairman GIBBONS. Now we turn to Mr. Putnam. Welcome, the floor is yours and we look forward to your testimony.

STATEMENT OF BORDEN PUTNAM, PRINCIPAL, RS INVESTMENTS MANAGEMENT

Mr. PUTNAM. Thank you very much. I will apologize in advance. I will depart from my written testimony as is my option, I believe. I have torn this up three times sitting here as I don't think you want to hear me recite things that we have heard here again and again.

I will say that I don't know what more can be said. We have heard from many qualified people over many years from both sides of this discussion and we find ourselves here today to continue this debate. I'm regretfully glad to be here, I guess, but I have not brought detailed facts or figures.

There are many well known and some much heralded cases that we have heard about and read about where seemingly unneeded regulatory delays and interferences to responsible mining

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The technical editing of the Groundwater Hydrology section leads one to question the quality of analysis that went into this EIS. For example, in the description on six hydrostratigraphic units on page 3–38, there are sentences out of place. After listing five rock types, a new paragraph begins to discuss the quartzite that underlies the primary water bearing units in the basin. The sentence about siltstones being structurally separated from the carbonates should be in the preceding paragraph.

Also, why is there a discussion of 'ninety four water wells' currently being monitored by Newmont in the middle of a short section on floodplains? DEIS at 3–52. It seems substantially out of place."

[27] Newmont says Indonesia too unstable for more exploration. Pay Dirt #741, March, 2001. At 31.

[28] SA rule could hurt mining. Pay Dirt #741, March, 2001. At 31.

procedures being conducted in a lawful manner are crippling our industry, me being a mining sympathizer, but I believe I can come to this hearing with a somewhat unique perspective having had a legitimate career in mining for 23 years before I went to the recent career in the financial industry.

I used to work here in Nevada for Newmont, full disclosure, and for Amax before that, before they were taken over by whomever took them over.

Currently I'm employed by a group of mutual funds who try to find investment opportunities in the natural resources sector. I am there to guide them through the geological risks as best I can, and over my 6 years tenure in the financial industry I have witnessed a steady corrosion to the viability and profitability of the U.S. Mining industry.

In part, this is due to declining metals prices in real terms or inflation adjustment terms, and this has coincided with an increasing focus on regulatory permitting and environmental issues. This is a natural evolution as demographics of the U.S. shift with increasing population growth resulting in communities often impinging upon mining areas once removed from towns.

However, there are now appearing to be so many restrictions and regulations which can be layered upon in a redundant manner, as we heard from the Women's Mining Coalition, upon a once healthy and now struggling industry we still expect to survive and thrive, and I don't think that is reasonable. I believe the proposed revisions to the 3809 regulations are not needed, and will unduly handicap an already struggling mining industry.

This turns out to be a discussion that is full of emotions, but it is not an emotional issue. It is an issue of economics. Mining is quite honestly, and generally, a low return business. The net operating margins are typically in the low single digits, making investment and reinvestment decisions very tough. The risks are high that the investments may never generate a return.

I'm going to "free-wheel" here for a second, because as I sit here, it occurs to me that we don't need to hear about mining anymore. What we need to hear about are analogues where investment has been discouraged, as has reinvestment, and where the lack of those investments has led to a shortfall in supply. Because, we are really talking about supply and demand here. If there wasn't a demand for minerals, we wouldn't be mining them. We are not doing it for fun. It is because it is a commodity that is needed for this country to be strong and self sufficient and to produce products that we all use and cherish.

Let's talk about natural gas. I don't know how much natural gas you use in your homes in rural Nevada. I presume you have got pipelines, and that lately the cost of gas is an issue where it didn't used to be one. It is an issue now because we discouraged reinvestment in the past and that lack of reinvestment has caught up with us. We are no longer able to supply the gas that we have grown into a huge demand for, and even worse are forecasting the growing demand for as we use it as the fuel of choice in so-called clean burning electric generation facilities.

Gas was regulated. When it became deregulated it set its own prices in a natural market; however, the returns were not high

enough and investments not made and the gas didn't come. That is in spite of a natural phenomenon of gas wells, whereby they decline on an annual basis. Right now Gulf of Mexico well declines are approaching 40 percent annually.

In the mining sense this is called depletion. As we mine a deposit, we deplete it. Mines don't last forever. I'm going to need a couple more minutes, thank you. The mines in this country are getting old and older, and as we discourage reinvestment in them or investment in new ones, we will no longer be able, or will be less able, to supply the minerals that we are consuming. We will face a growing problem.

A very similar analogue is provided by electrical power which someone spoke about earlier today. The power industry in this country has long been regulated, is struggling through deregulation in fitful ways, as has been evidenced by the poor manner in which California approached it, but the bottom line is that in all instances, by regulating those industries, we have discouraged investment.

We are now short of power. This is in spite of a growing population base and an economy that has growing energy demands on a per capita basis. We consume more goods and we consume more power on a per capita basis than most countries abroad, yet we don't see the benefits of encouraging investment in those things which we need and consume, which is fine, but just realize that at the end of the day it will cost us all more.

It will come from elsewhere if we can get it, but we will pay for it and there will be collateral loss of jobs throughout other industries in the U.S. This is not a real hard concept to comprehend, so I wanted to distract you away from mining, because mining is the issue, but there are other analogues where we can learn from experience.

Let me try to wrap this up in a timely manner. Let me see if I can get back into the flow of things here. Mining could be shuttered in America. We could do that, not intentionally, but by over indulgence of good intentions of environmental desires, to be even more restrictive of what is done and reducing the disturbance on public lands. That is a possibility that increases which each move, with each move to further restrict access, slow permitting or unnecessarily hinder development. But then we as a nation will pay more for raw materials as transportation costs grow as a proportion of total costs.

Reliance upon foreign sources for raw materials is unnecessary and in the end will be costly to the economy as a whole and is risky, much more risky than environmentally responsible mining. Thank you.

Chairman GIBBONS. Mr. Putnam, thank you. That is a refreshing approach to the discussion that is before us today, and certainly to those of us who are not as well versed in the economics of the overall picture appreciate the remarks you made and certainly can say thank you for your analysis in helping us better understand that issue.

[The prepared statement of Borden Putnam follows:]

Statement of Borden R. Putnam III, Principal, RS Investment Management

Please note that the opinions expressed here are mine alone, and do not necessarily reflect the views of RS Investment Management.

Issues presented for my comment:

1) The effect of existing Federal fees, such as claim maintenance fees, on exploration activity

The annual claim maintenance fee is intended to encourage continuing work progress to advance the understanding of the economic potential of the mining claim—to determine if economic returns are achievable. This fee is intended to discourage idle claims on Federal lands, as idle claims could preclude beneficial advancement work by others.

The claim maintenance fee impacts the exploration process in both positive and negative ways. In a positive sense, I believe the fees were designed to encourage work to progress on the lands under claim, such that lands found not prospective would be dropped to avoid the fee. In a negative sense, beyond the ten-claim exemption, the fee does nothing to advance the understanding of the economic potential of the claim, and becomes a prohibitive expense—an expense that actually could prohibit the orderly examination of mineral potential.

The claim maintenance fee alone adds to excessive, non-work related costs that could result in the claims being dropped, and work stopped—only to be restarted by another prospector without the benefit of the results of the former work. This scenario could lead to unneeded disturbance. Mineral exploration is a demanding and frustrating effort: Diligence and persistence is required, and results are slow coming. Conclusions are slower still. Geology is never straightforward, nor is it predictable, and results of work must be compiled into a growing understanding of the prospectiveness of the claims. This could result in a geologically complex claim(s) being successively re-worked but never being adequately understood.

The claim maintenance fee can put a prohibitive cost on holding claims, a cost which might discourage adequate and beneficial work. Often, the work that is required to validate a prospect is too difficult and expensive for an individual to mount, requiring the involvement of a larger corporation. However, there has been a tendency over the past 5- to 10-years for fewer and fewer companies to be willing to fund grass-roots, or prospecting-type exploration work, relying instead on individual prospectors to locate mineral ground. If mere holding fees become a disproportionate prospecting expense, the much-needed "grass roots" prospecting won't be done. In many instances, this could kill the incipient stages of mining-related jobs. So too, might this decline negate the need for much of the staffing of the oversight agencies (e.g., BLM).

One scenario that reveals this prohibitive expense is provided by the lengthy delay periods that can and do occur in the process of applying for and receiving permits for land disturbance work. During this period, holding costs can be prohibitive while the claimant awaits needed approval for work plans.

Mining is historically a low-return business. The industry typically averages low single-digits for return on capital employed (ROCE), well below their cost of capital—therefore, any increased burden on the operators will denigrate already poor returns for the industry, driving investors away and slowly killing the industry in the U.S. This will drive operators overseas, resulting in loss of jobs and tax base for communities and state and Federal agencies.

Miners have long faced declining metals prices, and increasing costs—for equipment, materials and permitting / legal and environmental reclamation issues. This crimps operating margins, reducing the economic return. This negatively impacts the perceived value of and need for exploration, which has seen drastic downturns in activity throughout the U.S. This, again, will lead to fewer jobs, and less basic industry in the U.S., leading to increased imports of raw materials for producing refined products.

2) The potential effect that proposed mining fees, such as a Federal royalty, would have on state revenues and mining operations.

The lack of a royalty on minerals mined from Federal lands is a controversial issue long thrown in the face of mining protagonists, as purported evidence of the irrationality of the 1872 Mining Law. The concept of a royalty may seem like a fair participation for the Federal or state government for mining done on public lands; however, a royalty can have a profound negative impact upon the internal rate of return from the series of cash flows a mining operation generates, as follows:

a) A top-line, or revenue royalty is impacted only by the selling price of the commodity being recovered, and does not reflect the profitability (or lack thereof) for the mining project.

b) Operating costs, including payroll, payroll taxes, equipment, energy and project financing costs, can and do vary over time (they typically escalate), and impact the operator only. The royalty holder is not impacted by either the fixed, or the changing variable costs. Thus, the revenue royalty holder has an unfair financial advantage over the operator, who has taken on all the financial risk to develop the project, and is completely burdened by all costs, and taxes.

c) A revenue royalty has the net affect of reducing the value of the material recovered to the mining company. That is, a 5% revenue royalty effectively reduces the revenue from the material recovered to 95% of the in-ground value. This is the same affect as a 5% drop in mined grade, or 5% drop in metallurgical recovery. Thus, a royalty can reduce the life of a mining project resulting in loss of jobs, and tax base for the county, and state. A mining project with a revenue royalty will have a lower rate-of-return which could result in the project not receiving financing, and not being built.

d) Typically, the operating margin is quite modest, and not sufficient to support the added burden of a royalty. Otherwise, economically viable projects might not be built.

3) The probable effects that the new 3809 regulations would have on the environment, state revenues and mining operations.

In my opinion, existing 43 CFR 3809 regulations promote environmentally responsible mining, and require sufficient and effective oversight by the BLM. Additional regulations will merely serve to add to the already extensive permitting process facing mine operators, and would likely dissuade some from pursuing mining in the U.S. This would obviously have strong negative affect on local communities and state economies that derive livelihood from mining. Environmentally, additional regulation is not needed—adequate checks-and—balances presently exist, and do not need to be improved upon. At most, better implementation of existing regulations would seem to fill the perceived regulatory gap, which could be aided by additional resources at oversight agencies.

4) The millsite opinion (Leshy, 1997) and its effect on the mining industry.

The millsite opinion issued during 1997 by Department of Interior Solicitor John Leshy is a very odd, in that it assumes a one-to-one relationship exists between mining-area disturbance and that area needed for facilities and mining spoil piles. However, there can be no assurance that such a relationship might exist. The reasons for this are many, only a few of which will be commented upon, as follows:

- First, by volume, the recovered minerals constitute a very small percentage, of the earth mined. Thus, the processing and impoundment areas are necessarily outsized relative to the hardrock mining footprint. This makes the tying together of the two claim-types ill advised.
- Second, the two claim types are of notably different shapes, and areas, with the hardrock mining claim being elongate for location over a lode, or vein-type deposit. A mill site claim is typically equilateral (square), intended for location on the valley floor adjacent to the lode(s). Mill sites are intended to host mining-related equipment, facilities and materials contained within environmentally secured areas. Attempting to tie the two differing areas to each other, is not logical.
- Third, the need to contain mining-related facilities and spoils piles, while obvious, may in certain conditions or irregular terrain, necessitate land of differing area even for like-operations in more level settings. This variability could certainly hold for operations of different age, due in-part to changed operating parameters or even improved environmental requirements. This could not have been anticipated for, and obviates the call for a one-to-one relationship existing between the two claim types.

Further, the logic may follow, that if an operator were needing additional millsite acreage to comply with, for instance, discharge permit requirements, but the need would cause the operator to exceed the "Leshy 1997 millsite opinion" that operator might be inclined (perhaps even mandated) to locate additional lode claims merely to maintain the proposed "one-for-one" stipulation. Clearly, this is not the intent, and could tie-up locatable minerals that might be prospected by other parties.

Operators plan their facilities for long-term operation, to allow environmental security, and operational flexibility. The operator must anticipate the ultimate need, and prepare the necessary ground for the long-term use by the operation. Tying the millsites acreage to equal that of the lode claims could limit the flexibility of the operator, and might introduce unnecessary environmental risk, buy confining facilities into inadequate areas.

Concluding remarks

The continued attacks upon the mining law of 1872, and corrosion to the already weakened economics of mining in America, will continue the already established trend of pushing the industry overseas. The push of mining offshore is inevitable until such a time as we view mining as a necessary industry, in the strategic interest of the U.S. An industry that provides needed raw materials for a healthy and independent democracy, and as well provides much needed job diversity in an economy trending evermore toward providing only "service" industry. Mining is being, and can continue to be done in an environmentally responsible manner. We must look for ways to help, not hinder the industry. Investors are already few in number, and without a promising outlook for a healthy, viable industry, the mining industry will not be able to compete for, or attract capital.

Chairman GIBBONS. I turn now to Dr. Price for your comments. Welcome, and the floor is yours.

STATEMENT OF DR. JONATHAN PRICE, DIRECTOR/STATE GEOLOGIST, NEVADA BUREAU OF MINES AND GEOLOGY

Mr. PRICE. Thank you. My name is Jon Price. I'm the Nevada State Geologist and Director of the Nevada Bureau of Mines and Geology. I thank you, Congressman Gibbons, for this opportunity to testify.

My written testimony includes a number of facts and figures that led to some of my opinions with regard to the regulatory burdens that have been disincentives for exploration in the U.S., but I would like to use the oral testimony opportunity to focus on the National Academy of Sciences report.

I served as a member of the National Research Council Committee on Hardrock Mining on Federal Lands. Please recognize that I'm testifying today not on behalf of the National Research Council, but in my capacity as the Nevada State Geologist.

Congress requested that the National Resource Council assess the adequacy of the regulatory framework for hardrock mining on Federal lands. The overarching conclusion of the Committee was that the existing regulations are generally well coordinated, although some changes are necessary.

The overall structure of the Federal and State laws and regulations that provide mining-related environmental protection is complicated, but generally effective. The structure reflects regulatory responses to geographical differences in mineral distribution among the states as well as the diversity of site-specific environmental conditions. Improvements in the implementation of existing regulations present the greatest opportunity for improving environmental protection and the efficiency of the regulatory process.

In other words, the system that was in place prior to the changes in January are generally working well to protect the environment and to allow for development of mineral resources. In my opinion the only regulatory changes that are necessary beyond what was in effect on January 19th of this year are those that are identified in the NRC report.

Chapter 4 of the NRC report contains the significant conclusions and recommendations, and for clarity those key recommendations were shortened to one sentence in bold face text; these are also in the executive summary. And accompanying each of those recommendations in that Chapter 4 are explanations of why the Committee felt the recommendation was justified, a discussion about

the implications of the recommendation, and further statements on how the recommendation should be implemented. In my opinion, the full recommendations are this entire chapter, not just the bold face text.

In its final EIS, BLM offered five alternatives. The fifth one was to make changes as recommended in the NRC report; however, I have not looked at that fifth alternative in great detail and I therefore favor BLM's going back to the status quo that existed on January 19th and carefully crafting rules that recognize the overarching conclusion of the NRC report.

Our office here at the Nevada Bureau of Mines and Geology has noticed some significant downturn in exploration in the last couple of years and we believe that much of that is due in part to decreased gold prices, but also in part to some of the disincentives that are in the regulatory system.

I would like to now focus a little bit on some of the recommendations in the NRC report that were not specifically related to BLM's 3809 regs. I wanted in particular to identify the Forest Service regulations that said they should allow exploration disturbing less than five acres to be approved or denied expeditiously similar to those used by BLM.

Currently we are seeing that the exploration companies are able to get in on BLM land commonly in a period of a few weeks, whereas on Forest Service land the typical time frame is in a range of 8 months to maybe as much as 2 years.

There are a number of other regulations that we addressed in that report and I will draw those to your attention in the written testimony. One of them had to do with the Good Samaritan Rules and a need for Congress to take another look at the Clean Water Act and CERCLA in terms of company liabilities with regard to abandoned mine lands, recommendations with regard to the appropriate role of the Federal Government in terms of mining related environmental research, and several other recommendations that again are referred to in the written testimony. I will be more than happy to answer questions again. Thank you.

Chairman GIBBONS. Well, I can tell you, Dr. Price, that between Dr. Myers and yourself you both have demonstrated a high degree of timeliness,both of you, in finishing your testimony. You were right on the bell, so perhaps it is due to the fact that you both have Ph.D.'s and can beat the clock.

[The prepared statement of Jonathan Price follows:]

Statement of Jonathan G. Price, Director/State Geologist, Nevada Bureau of Mines and Geology

My name is Jonathan Price. I am the Nevada State Geologist and Director of the Nevada Bureau of Mines and Geology, which is the state geological survey and a research and public service unit of the University and Community College System of Nevada. Thank you for this opportunity to testify on the effect of Federal mining fees and mining policy changes on state and local revenues and the mining industry.

Mining on Federal lands is critical to the Nation and to the State of Nevada. The economic impacts of mining in Nevada are significant. Gold production in Nevada boosts the overall earth-resource industry in our state to nearly $3 billion worth of product per year. We are in the midst of the largest gold boom in U.S. history, and, thanks in part to mining on Federal lands, the United States is a net exporter of gold, one of few mineral and energy resources for which we are not a net importer.

Nevada leads the nation in the production of gold, silver, barite, lithium, mercury, and the specialty clays, sepiolite and saponite. Other major commodities produced

in Nevada include construction aggregate (sand, gravel, and crushed stone), geothermal energy, lime, diatomite, gypsum, cement, silica (industrial sand), and magnesia. Local economies also benefit from mining. Construction of new homes, casinos, other businesses, schools, and roads continues the strong demand for local sources of sand, gravel, crushed stone, gypsum, and cement, all of which are abundant in Nevada. According to figures compiled by the Nevada Department of Employment, Training, and Rehabilitation, the mining industry directly employs approximately 11,000 people, and the industry is responsible for another 36,000 jobs related to providing the goods and services needed by the industry and its employees.

I served as a member of the National Academy of Sciences - National Research Council (NRC) Committee on Hardrock Mining on Federal Lands, which wrote the 1999 report with the same title. Congress requested that the NRC assess the adequacy of the regulatory framework for hardrock mining on Federal lands. The specific charges to the Committee were to identify Federal and state statutes and regulations applicable to environmental protection of Federal lands in connection with mining activities; consider the adequacy of Federal and state environmental, reclamation and permitting statutes and regulations to prevent unnecessary or undue degradation; and draw conclusions and make recommendations regarding how Federal and state environmental, reclamation and permitting requirements and programs can be coordinated to ensure environmental protection, increase efficiency, avoid duplication and delay, and identify the most cost-effective manner for implementation.

The overarching conclusion of the NRC Committee was that "Existing regulations are generally well coordinated, although some changes are necessary. The overall structure of the Federal and state laws and regulations that provide mining-related environmental protection is complicated, but generally effective. The structure reflects regulatory responses to geographical differences in mineral distribution among the states, as well as the diversity of site-specific environmental conditions. . . Improvements in the implementation of existing regulations present the greatest opportunity for improving environmental protection and the efficiency of the regulatory process."

In other words, the regulatory system that was in place through January 19, 2001, prior to the new rules that were published on November 21, 2000, generally works well to protect the environment and allow for development of mineral resources. In my opinion, the only regulatory changes that are necessary, beyond what was in effect on January 19, 2001, are those identified in the NRC report.

Chapter 4 of the NRC report on Hardrock Mining on Federal Lands contains several significant conclusions and recommendations. For clarity, the key recommendations were shortened to generally one sentence of bold-faced text. Accompanying each recommendation are explanations of why the NRC Committee felt the recommendation was justified, a discussion about the implications of the recommendation, and further statements on how recommendations should be implemented. In my opinion, the full recommendations are this entire chapter, not just the bold-faced text.

In its final environmental impact statement (EIS) on Surface Management Regulations for Locatable Mineral Operations (43 CFR 3809), dated October 2000, the Bureau of Land Management offered five alternatives. The fifth alternative was to make changes as recommended in the NRC report. However, this was not the preferred alternative of the previous administration when it published its final rules on November 21, 2000. I believe that BLM should follow the full recommendations in the NRC report. Although I favor BLM's going forward with implementing those changes that were recommended by the NRC, I have not fully analyzed the fifth alternative in the EIS to make sure that it is fully consistent with the NRC report. I therefore favor BLM's going back to the status quo as it existed on January 19, 2001 and carefully crafting new rules that recognize the overarching conclusion of the NRC report: "Existing regulations are generally well coordinated, although some changes are necessary."

BLM estimated in the EIS that, with their course of action, there would be substantial losses of mine production and related jobs, and that 70% of the losses would be in Nevada.

Our office has noticed a significant downturn in exploration activity in Nevada, as measured in the last two years by 20 to 40 percent decreases in sales of topographic base maps, geologic maps, and reports used by exploration geologists. Although some of this can be attributed to relatively low prices for gold and other metals, results of a survey (conducted by the Nevada Division of Minerals and published in September 2000) of companies exploring in Nevada suggest that the regulatory environment (including such issues as permitting times, uncertainties about Mining

Law reform, Federal claim-maintenance fees, and land withdrawals) has become a significant disincentive for exploration.

Another measure of exploration activity is the number of active claims held on Federal lands. According to the Bureau of Land Management, the number declined from 1999 to 2000 by approximately 8 percent, to 105,555. This number is substantially lower than the figures of about 400,000 active claims each year during the period from 1989 to 1992, after which a new claim-holding fee was imposed by the Federal Government. The numbers dropped to below 150,000 active claims in each year since 1992.

The decrease in exploration activity is particularly troublesome, because the deposits found today will become the mines of the future, and because the expertise needed to find these deposits is leaving the United States. Quoting from the 2001 NRC report on Evolutionary and Revolutionary Technologies for Mining, "The United States is both a major consumer and a major producer of mineral commodities, and the U.S. economy could not function without minerals and the products made from them. In states and regions where mining is concentrated, this industry plays an important role in the local economy." I believe that is important that the U.S. maintain an environmentally responsible mining industry and train professionals to find and mine the mineral deposits that we will need in the future.

The NRC report on Hardrock Mining on Federal Lands made several recommendations that were not directly relevant to BLM's "3809" rules governing mining operations on public lands, but which can help encourage environmentally responsible mineral-resource development. I would like to highlight a few of those by quoting from the report.

"Recommendation 3: Forest Service regulations should allow exploration disturbing less than five acres to be approved or denied expeditiously, similar to notice-level exploration activities on BLM lands.

> Under the current system for notice-level exploration activities affecting five acres of land or less, BLM has 15 days to respond and notify the operator if extraordinary measures are needed for the planned activities. In contrast, Forest Service officials reported that essentially identical exploration activities on Forest Service lands often require eight months lead time and sometimes as long as two years to obtain approval, although some approvals for exploration are obtained more quickly."

"Recommendation 7: Existing environmental laws and regulations should be modified to allow and promote the cleanup of abandoned mine sites in or adjacent to new mine areas without causing mine operators to incur additional environmental liabilities.

> To promote voluntary cleanup programs at abandoned mine sites, Congress needs to approve changes to the Clean Water Act and the Comprehensive Environmental Response, Compensation, and Liability Act to minimize company liabilities."

"Recommendation 8: Congress should fund an aggressive and coordinated research program related to environmental impacts of hardrock mining."

> The 1999 NRC report contains suggestions for implementing this recommendation and an appendix on research needs. In addition, a new NRC report, published in 2001 and titled Evolutionary and Revolutionary Technologies for Mining, further addresses research needs in mining, including environmental issues.

"Recommendation 10: From the earliest stages of the National Environmental Policy Act (NEPA) process, all agencies with jurisdiction over mining operations or affected resources should be required to cooperate effectively in the scoping, preparation, and review of environmental impact assessments for new mines. Tribes and nongovernmental organizations should be encouraged to participate and should participate from the earliest stages.

> The lack of early, consistent cooperation and participation by all the Federal, state, and local agencies involved in the NEPA process results in excessive costs, delays, and inefficiencies in the permitting of mining on Federal lands."

"Recommendation 13: BLM and the Forest Service should identify, regularly update, and make available to the public, information identifying those parts of Federal lands that will require special consideration in land-use decisions because of natural and cultural resources or special environmental sensitivities.

> BLM and Forest Service should identify natural or cultural resources or environmental sensitivities on Federal lands that require special consideration in land use planning, including that related to hardrock mining. The agencies should use their land use planning processes to (1) identify these lands that should be withdrawn from hardrock mining or may require

special considerations in permitting, (2) give specific consideration to hardrock mining as a potential land use, and (3) establish guidelines for reclamation and mitigation that apply to mining. This can be accomplished through the land use plans for Federal lands required by the Federal Land Policy and Management Act and the National Forest Management Act."

"Recommendation 16: BLM and the Forest Service should plan for and implement a more timely permitting process, while still protecting the environment.

The permitting process is cumbersome, complex, and unpredictable because it requires cooperation among many stakeholders and compliance with dozens of regulations for a single mine. As a result, there is a tendency for the process to drag on for years, even a decade or more."

Some of these recommendations will require congressional action, and some will require changes in Federal regulations. I would be happy to attempt to answer any questions you may have about the NRC report or my personal opinions concerning mining policies. Thank you.

Chairman GIBBONS. I want to thank all of you for being here again, too, and certainly appreciate the time you have all taken to be here for this hearing.

Let me ask Mr. Gaskin a question. As I listened to your testimony and in talking about the State of Nevada and its Interim Fluid Management Trust Fund, can you tell us, and I'm sure you heard Dr. Myers' testimony about his concerns for reinjection and drainage problems, tell us a little more if you could or elaborate for us how that came to be under the 3809 regulations and what has been the impact of that trust fund.

Mr. GASKIN. Well, in the past number of years we have experienced an increase in bankruptcies and other financial problems in mining, operations in the state resulting in some site abandonments, often quite sudden, and at a lot of these mines there are fluid management issues. They have process solutions that are constantly being recirculated in the facility, and if the pumps are just turned off and the people walk away, the ponds will overflow and release often cyanide solution to the environment. It is a possibility that concerned us very much, so we have been taking a great number of steps to prevent that from happening and we have prevented that from happening in the state to this point.

One of the problems we saw was that when there is a bankruptcy, we have to act quickly to recover the bond for that site so we can have funds available to go out and manage those fluid systems on a site quickly, and that is difficult to do with a lot of the bonding mechanisms that are currently in place. So what we wanted to establish was a liquid fund of financial resources to be able to send people out immediately as needed, and so we work closely with the industry to come up with a strategy whereby mining fees would be collected and placed into a trust fund under the State's control that would allow us to arrange for a contract. We have a specific contractor selected who is ready on a moment's notice to go out to any site that may require urgent fluid management.

Chairman GIBBONS. So this is a concept and a program which was developed at the State level in coordination with the private industries. Is it funded completely by private industry fees that are made to it or are general taxpayer monies contributed?

Mr. GASKIN. We revised our regulations to require fees from industry, it is totally funded by industry fees.

Chairman GIBBONS. And it has been an effective program to this date?

Mr. GASKIN. We haven't had to use it up to this point and we hope to never use it, but it is there in case we do need it.

Chairman GIBBONS. Dr. Myers, let me first thank you again, too, for being here today, and I do agree with you about the studies, the USGS studies and the funding in the budget for studying toxic minerals, et cetera, and I will work to assure that funding remains in the USGS budget for that provision, so I just wanted to thank you for your attention to that issue as well.

And let me ask just basically a question that perhaps you can help us, because you obviously take a very personal interest in what is going on in the mining industry throughout the State of Nevada and possibly in the California boundary areas as well since the Great Basin covers more than just the State of Nevada. In your review tell me and tell us which mines are doing a good job that you can be proud of today?

Mr. MYERS. Boy, let's put me on the spot here. There are, there is good reclamation at some facilities. Gold Quarry has some decent reclamation, although I have some problems with their dewatering, for example. There are good and bad things, things that I will like and things that I will dislike at many of the facilities.

Marigold, Mr. Jeannes was sitting here awhile ago, they had some good reclamation on I think it was tailings impoundment, but they also have a leak, so we have a little problem with that.

Let's see, there is good reclamation I think, I think there is a pretty good reclamation ongoing at Little Bald and the Bald Mountain Mine, Placer Dome's facility. I just received a closure plan for it yesterday and I want to reserve judgment on what I think about the closure plans, what they are doing with the heaps, something you just asked Dave Gaskin about a minute ago. I want to reserve judgment on that.

I think the Meikle Mine of Barrick Gold Mines is one of the best run mines in the state, although in general an underground mine. The environmental community, one of the attacks of the environmental community in the future will be to encourage more underground facilities and fewer above ground because there is less disturbance, there is less dewatering required, there is less pit lake created, so those would be the ones that come to mind.

Chairman GIBBONS. Let me ask maybe even a broader philosophical question you might be able to help us with. As we look at the process, the political process of identifying lands and which lands should or should not be available for mining, how do we, how can we avoid closing lands that contain valuable mineral deposits to mineral development? How can we avoid that?

Mr. MYERS. I know, you know the miners will say, friends of mine who are miners will say gold is where you find it, but you have to be able to mine where you find it. There are other places, there are places where you find gold that the environmental community would say this is too nice, the values of the wilderness, open space, biodiversity exceed the value of the mineral that you would withdraw.

For example, if you found a major gold deposit under the peak at Arc Dome in the Toiyabe wilderness, there is little question to most people that we should probably forego that. It becomes more difficult. One of the mines that I said I would probably have

opposed and I mentioned before on Forest Service land was Jerritt Canyon and that is not because of anything they are doing specifically, but because it was such pristine wilderness and that is a place where had I been around in '82 I think when it was permitted, that, I mean the broader, in answer to your broader question it is really hard in setting a standard as to where that would be.

And I think we do need to have, we are looking at it through wilderness processes and monument designations and things like that and it is hard to set a broad standard and I don't think I'm giving you a very good answer to the broad philosophical question, but I'm trying.

Chairman GIBBONS. Well, let me turn in the time we have here to some of the other panelists on the questions we have here today. Maybe Mr. Putnam can help us understand the political environments and the effect of political environments, the stable political environments, what would that have on the prediction or the decision making process to an investor?

Mr. PUTNAM. The answer I think would be twofold. First is ownership rights, which is not what this panel is about to a large degree, so I won't speak to that, but I will speak to what is called the risk premium, and that being as I evaluate or as any investor would evaluate and the company would evaluate the series of cash flows that are forecast from that operation, to understand the value of those in present day dollars you apply a discount rate. The Federal Reserve just reduced the discount rate to 4 percent. The Fed's funds rate is presently four and a half percent.

The risk-free premium is sort of treasury bills, excuse me, treasuries. What I would do in evaluating an investment opportunity in a foreign country is try to judge first of all what is the risk free rate in that country, which is generally larger than 5 percent or higher than 5 percent, and then to that we would add a risk premium. And that means our expectation is that for us to put our capital at risk, or our shareholders' capital at risk, in a foreign investment, we want to guarantee a rate of return that exceeds what we think is the risk free rate of that country, with a premium attached to it to justify the exposure of that capital.

Chairman GIBBONS. So what you are saying—.

Mr. PUTNAM. I hope that is clear.

Chairman GIBBONS. Yes. What you are saying is that before many of these mining companies, which do not usually dip into their own pockets because they don't have the resources, the financial capability to invest, they come to a financial market like yourself and ask for funding of some type to help them with this investment. You make those decisions and those predictions before you lend them the money with regard to any investment they may make or development they may use of those capital funds they have gotten from the financial industry and the financial markets.

What then would be your considerations as a financial analyst on say the effects of royalty when you compare it to a commodity-based product, the effects of royalty on a mining operation, and how can a mining operator adjust for royalty in his, either his profit predictions, et cetera, when that is there?

Mr. PUTNAM. There is sort of two themes there, maybe three questions.

Chairman GIBBONS. And all very unclear, I'm sure, but you will sort them out.

Mr. PUTNAM. On the first one, let me address you. When a company would come to us and ask us if we would help them finance an operation in a foreign country or anywhere, we would discuss with them what their cost of capital is, which first you look at the balance sheet on their debt component, that is a pretty easy number to determine because it is the interest coupons on their debt instruments, but then we add to that an equity component which is what we expect to make on a similar investment.

It is an opportunity cost if you studied finance. If I take a dollar and put it in this operation, I'm taking that dollar away from another opportunity and it is that opportunity that we are judging against this, so that opportunity, or cost decision, is where we really hammer them, and we want to make sure their ability to return or exceed their cost of capital as they judge it is something that will exceed the opportunity cost that we are passing up to make that investment. Sometimes that is a high number-like 15 percent, after tax.

Your second question about royalties, I touched on royalties in my written testimony. Royalties are a very interesting thing and they can often be thrown out as a solution to help the Federal Government or the public participate in the benefits of the mining operation. However, royalties are a double-edged sword.

While they do allow participation in the revenue line, and you do need to understand an income statement and be aware they impact the operating income and the cash flow. The royalty as is being discussed, is called a revenue royalty. It is right off the top line, so it has a linear relationship to the value of the minerals.

If it is say a 5-percent royalty, it means the value of the minerals being extracted are now only 95 percent what they originally were to the operator, so he needs to adjust his model for only recapturing 95 percent of what is called the in situ value.

The problem with that is, and as I think Dr. Myers touched upon here, there is a difference between underground mines and open pit mines and that is not a decision made by engineers, necessarily. It is a decision that comes out of the style of the ore deposit.

To understand an ore deposit, an ore reserve is like a cloud, and clouds are sort of lumpy and diffuse all at the same time. As you apply a royalty to that cloud you are putting a higher requirement for return on that decision.

What happens, is the grade or, if you will, the density of the cloud needs to be more, so the diffuse parts of the cloud start to disappear from being economically extracted. The other part of the sword, the other edge, is that mines may not get built at all because the royalty may take away that very small profit margin that exists in the first place.

When a royalty is imposed over a deposit that could bear it, and I'm not sure many can, much of the deposit may fall away and not be economic at current or reasonably forecast commodity process. So, a royalty is a very dangerous thing. And it is sort of unfair, because the royalty holder does not have any capital at risk, and yet

they have full participation at the revenue line, but share no risks for costs, no risk for taxes, etc.

Chairman GIBBONS. Let me ask a question that was drafted here by some of the staff that wants to take advantage of your expertise and wisdom and perhaps you can help us with this, and I will read this. It says that former Interior Secretary Babbitt valued some undeveloped land in Arizona that he patented to Asarco, one of the World's largest mining companies at the time, at three billion dollars. That is the value he placed on the land. Yet the stock market valued the entire company at $750 million.

And Senator Dale Bumpers valued the undeveloped land in Montana patented to Stillwater Mining Company at $38 billion and at the time Wall Street valued that company at about $850 million. In fact, I think at the time Wall Street probably valued the entire hardrock mining industry in North America at something less than 38 billion dollars.

I guess my question would be what is Wall Street missing that Senator Bumpers and Secretary Babbitt see, and maybe I should have asked is Secretary Babbitt another Warren Buffet?

Mr. PUTNAM. That is an interesting conclusion to the question. I don't mean to be flip, but I think that Warren Buffet would pay attention to the balance sheet and to the debt obligations and to the expenses required to bring those resources to development.

I can't speak to where those numbers came from. Clearly there is no development costs or interest expense against the debt you would raise, or other, existing debts from other mining enterprises which I would deduct from the valuation that I'm willing to pay for them or, if you will, I add it to what is called an enterprise value, and subtract the cash on the balance sheet.

I can only presume that he used some forward price that assumes a very optimistic, ever-escalating on a compounding basis price for the commodity to be extracted. We don't work that way. I work on a flat, nonescalating price deck as it is called; however, I escalate costs according to what my view of inflation is.

Inflation doesn't go away. Commodity prices seem to decline, so we are always fighting an ever narrowing margin. But I would say that Warren Buffet looking at those things first of all, he probably doesn't own mining shares, I don't believe he owns that silver either, as I think he sold that, but I also think he would understand the costs that would be required and the debt that would be burdened on the company to bring those resources to development for the good of the taxpayers.

Chairman GIBBONS. We will turn to Dr. Price who has been very patient in listening to all of this and I appreciate the time that you have dedicated to this. You talked about finding, the findings of the Hardrock Mining on Federal Lands report that you were part of.

Tell me or let me hear from you what some of the findings on the adequacy of the environmental protections were by that Committee, by that report on the then existing regulations. Did they find that the, to summarize what I'm trying to say, did they find the regulations need to vastly change the dimensions in order to protect the environment?

Mr. PRICE. Not at all. As a matter of fact, the charge from Congress was specifically to look at the existing framework. We didn't

actually look at the proposed 3809 regs in any great detail. We just looked at the way things were at the time and that overarching conclusion was that things are working pretty well. We did identify a few areas where some changes seemed appropriate, but overall the environment is being protected.

Chairman GIBBONS. By the then existing 3809 regulations?

Mr. PRICE. Correct.

Chairman GIBBONS. That was prior to the new changes made in the last Administration as of what, January 20th?

Mr. PRICE. Correct.

Chairman GIBBONS. Of this year. You talked about mine reclamation, the Good Samaritan issue. Explain for us what that is about and why that is imperative that we address the Good Samaritan issue.

Mr. PRICE. Essentially many mines are being put into operation in old mining districts and there is an opportunity for a company that comes in to an old district to clean up some of the problems of the past. However, if that particular property is on somebody else's abandoned area, for example, if it is on a BLM section that is not part of the control of the mining operation, but the mining company would like to come in and be a Good Samaritan and clean it up, the current regulations would make that company liable if they stepped in and tried to clean up that particular area, so all future environmental problems that may occur on that land would then be the liability of that company.

That is part of the way CERCLA, Superfund Legislation, works and that is an issue that doesn't have anything to do with the 3809 regs, but would require you folks to go back into Super Fund Legislation and allow for this Good Samaritan activity to take place.

Chairman GIBBONS. Well, I do believe and I'm sure many Nevadans believe that as we look at the abandoned mines that are around this state and other states as well that we have to pay attention to what has happened with these mines and make sure that we address the problems that were created in some of those instances as we talked about earlier. The World War II effort which had different technology and different viewpoints about what we know today during the then existing operations. Addressing the abandoned mine issues I think is a very critical part of the future of mining, not just for what we have going today, but I think down the road.

The abandoned mine process then according to your recommendations and the Good Samaritan provision would permit companies to use their private resources to go in and address these environmental problems that were existing prior to their arrival on the scene, and without accumulating the liability for the prior existing environmental problems, which therefore is the Good Samaritan issue that you are talking about there.

What were the recommendations from the National Academy of Sciences about, well, let me just go back before I, strike that, and ask the question about what were the National Academy of Sciences criteria for selecting a panel for this Committee?

Mr. PRICE. The NRC goes through a fairly rigorous process of trying to get experts who understand the issues. They try to get representation from the elite body of the National Academy of

Sciences and National Academy of Engineering, experts that don't necessarily know the particular subject but are generally smart people, and they also try to get a good balance of opinion, so that there is a balance of the bias.

They try not to have any conflict of interest within the Committees, but they do allow for a balance of bias, so this particular Committee was viewed, I think in the end, as having a good balance across the board in having people that had clear linkages and viewpoints in favor of the mining industry as well as some people that had clear views opposing some of the mining activities.

The process allows for coming to a consensus, so in many cases individuals may want to push a recommendation in one direction, where other individuals were pushed in another direction, but every attempt is made to come to the consensus of opinions and that usually boils down to a little bit more emphasis on fact and scientific process rather than opinion.

Chairman GIBBONS. Congress required you to provide this report from the National Research Council, this book here that you have referenced, Hardrock Mining on Federal Lands, as a study of what was needed to modify and change the 3809 regulations.

Is it your opinion that the Bureau of Land Management or the Department of Interior, excuse me, the Department of Interior took the suggestions from this book as the basis or the guidelines for which they made their 3809 changes?

Mr. PRICE. I will speak in my own personal opinion here, no, it is not. I believe the recommendations that they came up with are not nearly as consistent with the NRC report as they could have been.

Chairman GIBBONS. That is strange, because as I recall what Secretary Babbitt at that time said, that within 24 hours after receiving this report the study ratifies everything, and I quote, ratifies everything I have seen and have been trying to do for the last 6 years, which makes it questionable why if it ratified everything that he had proposed and attempted to do why he didn't follow it with regard to the recommended changes in the 3809 regulations.

Gentlemen, I see that we have kept you here the requisite amount of time and I want to thank you as well for your participation and turn you loose and thank you again for everything.

And I will call up our Panel IV for this afternoon, Mr. Lyle Taylor, President and CEO of Geotemps; Mr. Frank Lewis of F.W. Lewis, Incorporated, and please excuse me if I mispronounce your name, Bill, Mr. Bill Kohlmoos, President of Barium Products and Mining Company.

Chairman GIBBONS. Gentlemen, welcome. While you are getting comfortable I will remind you we are trying to keep it in time limits we have available and remaining. If you wish, your full and written statement will be entered into the record. You may summarize in a verbal presentation. With that I will turn to Mr. Lyle Taylor. Good afternoon and welcome. The floor is yours. We look forward to your testimony.

STATEMENT OF THOMAS LYLE TAYLOR, PRESIDENT AND CEO, GEOTEMPS, INC.

Mr. TAYLOR. Good afternoon, Congressman. Thank you very much for wanting us to appear and talk to you. Before I start, my oral statement is in fact a summary of what I gave to you as a statement, and I would like to preface it just by saying it is more on the side of an emotional summarization of the heart of what is going on.

Just before I came in here today, I ran into one of my former employees who is now working at the County, Washoe County. He had been working in the mining industry for quite a number of years, a graduate geologist and finally came into me and said I'm not going to put up with the layoffs anymore, get me out of the industry, whereupon we got him a job with the County. He asked me—

Chairman GIBBONS. It may not be a good choice knowing what we know about the revenues coming into counties today.

Mr. TAYLOR. He asked me what I was doing here and I explained to him that I was coming to testify at the hearing and his comments were, Lyle, give them hell. So if you will excuse me, I will try and do that.

My brief statement to this hearing reflects my perspective as an employer of thousands of westerners in the mining industry over a 30 some odd year career, especially in the last 16 years as President of Geotemps, Incorporated, a Nevada corporation.

I have become personally associated with my employees and their families over these years and I have become increasingly saddened by the unrelenting pressure from the Government to eliminate U.S. mining as a viable way of earning a living. In Nevada we used to have three, four and often five generations of mining families, grandfathers, fathers, wives, cousins, daughters, sons, granddaughters working around the west, the northwest, the southwest for prospering companies, silver companies, gold, lead, mercury, aggregates, molybdenum, you get the picture.

The pressure on Government comes from the most (it seems to me) politically correct, a group of people who seem to hate business and appear to despise capitalism who have made a religion out of "Environmental Activism."

Ladies and gentlemen, the good miners who I have worked with who have worked in, on, around, under the earth coaxing from the soil our planet's vital materials are true environmentalists. They are the conservationists of the natural resources of the world. No, they won't preserve the world in the state you see it now. They will mold the minerals of this nation into the materials that are basic, that are essential to our American way of life, to the quality of life that exists in America to the envy of every other country in the world.

The earth is not in stasis. We are in a period of warming since the last ice age and will probably return to another ice age or some other state of uninhabited planetary form brought on by the eternal motions of tectonic plates, vulcanism or meteors or whatever. That is what happens over geologic time. There is no global just right. There is only global change.

No matter what some shortsighted true believers acting like chicken little say, every man-made edifice is going to be naturally

eradicated. We can conserve and wisely use our resources in multiple ways, but they will not stand forever and we will be long gone before we conquer mother nature.

As to a problem currently in the news pretty much everywhere, mining doesn't create arsenic. It exists naturally in our soil after 65 or so million years of hot springs percolating through the earth's mantel along with other, every other type of toxic element you ever heard of.

A baseline study similar to the Natural Uranium Resource Evaluation, NURE, would show the folly of continually blaming all toxins on industry pollution. The distribution of naturally occurring toxic metals and other elements is ignored and/or misunderstood by the public.

The employees on whose behalf I speak are asking you to see this time in your governmental oversight as a crossing, perhaps like a railroad crossing. We would like you to stop trying to regulate us out of existence because of ignorance and political pressure. To look at the body of knowledge accumulated on any mine site, there is no lack of intelligence evident in mining camps and no desire to kill our children, our families, or our friends for the sake of a salary.

Listen to the combined wisdom of earth scientists that make up the management of mining companies and to the common miners who love the earth, the weight of the rock, the smell of the ground, the thrill and the sight and taste of discovery.

America cannot maintain a civilized way of life without the products that result from mining and we are not crazed polluters. We are hard-working responsible citizens who want to be treated fairly. We don't mind being the most regulated industry in the west. We just want fair scientifically based, thoughtful, evenhanded treatment.

Stop reacting to the politically driven uninformed. Look at all sides of the issues. Listen to your constituents who resist being turned into burger flippers. Help us help America. We will conserve resources. We will protect our communities from pollution. We want to be productive and we need your help. Thank you very much, Congressman.

Chairman GIBBONS. Thank you very much. I can tell you have some supporters in the audience, probably some of your Geotemps.

[The prepared statement of Thomas Lyle Taylor follows:]

Statement of Thomas Lyle Taylor, President & CEO, Geotemps, Inc.

As the largest niche marketed personnel service specializing in the mining industry, with offices in Reno, Elko, Ely and Winnemucca, Nevada and Tucson, Arizona we are constantly in touch with mining industry employees looking for work or looking for people. We have seen the exploration sector of mining decline disproportionately to the commodity price since the maintenance fee system was instituted. Work that required people doing jobs earning money and caring for their families has been reduced in Nevada alone from estimates of 20 million dollars per year to about 10 million dollars a year for a loss of +129 million dollars to our economy.

There has been a dramatic change in the nature of our business and in the demand for labor in the mining industry in the western United States. A decade ago, GEOTEMPS' labor supply was nearly 100% focused on mineral exploration-related jobs, i.e., exploration geologists, claim stakers, geotechnicians, drill helpers, landmen, reclamation crews, etc. By 1997, labor for exploration work entailed roughly 40% of our business, but in the past three years, and in particular during this past year, there has been a near complete collapse. It is my estimate that in the coming year, 2001, almost none of our clients will be requesting mineral exploration-

related labor. I estimate that the near total demise of grass roots exploration in 2001 in the western United States will prevent GEOTEMPS from placing hundreds of individuals in jobs in the exploration sector in the upcoming year. Over the years many exploration geologists and other exploration laborers have come to depend on GEOTEMPS to provide them with steady, long-term work. On a personal level it is devastating to me that many of those formerly productive, well-skilled people will have to change industries or careers altogether and give up the way of life they love.

GEOTEMPS has been forced to adjust to this changing climate, now focusing almost solely on providing personnel to our clients at operating existing mines where the initial exploration investments were already made a decade or more ago. GEOTEMPS recently has been forced to close four of its offices due to the bottoming out of the exploration labor market, including our Denver office, which supplied mostly exploration labor. In Reno, nearly 90% of the exploration offices of the major mining companies have also closed in the past two years.

I can attest that the cause of this dramatic decline in mining exploration in the western United States is the increasingly difficult and burdensome regulatory scheme implemented by our Federal Government. My clients increasingly perceive regulatory compliance as a moving target, with the Bureau of Land Management ("BLM") and other Federal agencies gradually imposing a nearly never-ending regulatory process with substantially increased risk to investments. A striking example of this came in March 1999, when the Interior Department and the Agriculture Department jointly took an unprecedented action to revoke the plan of operations for the Crown Jewel Project in the State of Washington, after the plan of operations had been reviewed over a period of years and approved by the BLM and the U. S. Forest Service, and even reviewed and upheld by the Federal district court in Oregon. That action sent shockwaves throughout the mining industry and served to substantially reduce the willingness of companies to make new exploration and mine development investments on Federal public lands in the United States. The rulemaking to increase the stringency of the 43 C.F.R. Subpart 3809 regulations, which Secretary Babbitt initiated in January of 1997, acted as a further disincentive to new mineral exploration and mine development investments.

Based on my discussions with numerous mining industry professionals, it is nonsense to suggest that lower gold prices are the dominant cause of the recent declines in U.S. mineral exploration investment. As stated above, it is my firm view that the increasingly stringent U.S. regulatory policies and practices are the dominant cause, and the recently released final revisions to the 43 C.F.R. Subpart 3809 regulations that were published in the Federal Register on November 21, 2000 are the latest and most devastating manifestation of this trend. Essentially, the new final 3809 regulations will spell the demise of the domestic exploration industry, already crippled by BLM's and other agencies' recent tightening grip. These final regulations will essentially kill the remaining limited incentives for the new mineral exploration and mine development investments.

The near total lack of grass roots exploration, which I expect will prevail during 2001 and beyond I believe will be caused by the threat of a Federal royalty scheme, the millsite opinion, the claim maintenance fees and in large part by the new final 3809 regulations. These actions by the Government are having an irreversible adverse impact on future mineral production and mining jobs associated with operating mines. Without any new grass roots exploration in the western United States, there can be no future development of new mines. Absent relief from these regulations production and employment levels will exist for years to come at substantially lower levels due to the dramatic decline in grass roots exploration occurring now.

Chairman GIBBONS. Mr. Lewis, welcome to an old friend and colleague, glad to have you here. We look forward to your testimony.

STATEMENT OF FRANK LEWIS, OWNER, F.W. LEWIS, INC.

Mr. LEWIS. Thank you, Congressman Gibbons. My name is Frank Lewis for the record. Thank you very much for allowing the privilege of testifying before you. I have been a miner and prospector in Nevada since 1954. At one time we had over a thousand stake mining claims accumulated over the years, mostly in eastern Nevada. All of my working life I spent most of the money I earned exploring in Nevada, and my wife didn't like it either.

I was one of the more successful individual mine property developers. My company accumulated patented as well as unpatented claims. Since the hundred dollar fee went into effect, we have not staked one mining claim.

When Congress passed the $100 fee and greatly expanded the bonding and other new regulations removing all or almost all of the small miners like myself out of the business of exploration in Nevada on unpatented claims, it does not pay anymore to explore in Nevada hoping you can find a company to lease your property after you have made a discovery. We have dropped almost all of our unpatented claims, keeping only my patented claims.

About 18 years ago I financed my son, a metallurgical engineer, in the development of an assay laboratory, metallurgical testing laboratory and a mine supply business here in Nevada. We employed between 20 and 25 people here in Reno on property and a building, which I purchased.

For the last 2 years the lab lost money due to a lack of customers. He had to lay off most of his employees, close down our laboratory, and sell off the laboratory equipment. As they are finding out in California, if a company does not make money they can't hire people and pay their bills.

There is very little exploration being done in Nevada now except as expansion of existing good mines. My companies have all, many companies have already declared bankruptcy in this state and many more are going to be bankrupt before this is over.

Most of the mines are going to have to lay off their employees. Only a handful of the existing mining companies in Nevada are actually reporting company profits. I have personally paid hundreds of thousands of dollars to the State of Nevada in net proceeds of mine taxes over the years. Nevada's net proceeds income tax is a principal source of income to the state.

It is true that it is not just the $100 fee that is the problem. The reasons for pending doom in the mining business are cumulative. Bonding has hurt, having to spend millions of dollars and hundreds of millions of dollars to clean up to make a few acres that a cow can live on a few days or a few jack rabbits is money spent that should have been left in the company to reinvest in and find another mine to keep people working. We need a friendly government to encourage us, one that believes in private property rights.

To give another example, we spent hundreds of thousands of dollars a few years ago on a group of unpatented claims near Battle Mountain, Nevada. We did develop a small fairly high grade gold deposit. We then spent $50,000 hiring engineers to do a near feasibility study to accompany our patent application.

We applied for a patent and the U.S. Government mining engineer Mineral Examiner approved it after holding it a few years. The Reno BLM office approved it and sent it to Washington, which is where it now sits as it has been for years and it hasn't been signed. There is one claim in my patent.

The least that should be done if you want to help get this industry on its feet would be to eliminate or lower the fee to $5. The $5 is about what would pay for the BLM office work, which is a senseless duplication of the exact same work the counties already do for

one dollar. They have done it for over 100 years. Thank you very much, sir.

Chairman GIBBONS. Thank you, Mr. Lewis. I don't think he was clapping to get you to stop, though.

[The prepared statement of Frank Lewis follows:]

Statement of Frank W. Lewis, Owner, F. W. Lewis, Inc.

Members of the Committee. My Name is Frank W. Lewis. Thank you very much for allowing me the privilege of testifying before you.

I have been a miner and prospector in Nevada since 1954. My first mining venture was with my now deceased father in law in Ely, Nevada. Our equipment consisted of picks and shovels. We hand trammed gold and silver flux ore to our ore bin. Then with an old 5-ton truck we hauled our ore to the McGill smelter. For any of you who have been to Ely and know the large "WP" on the mountain behind Ely, that's where our mine was.

Over the years my little company, F. W. Lewis, Inc. has purchased many patented mines in Nevada, and Colorado. We also staked literally thousands of unpatented claims which we explored and sometimes mined. Mostly we explored developing targets for interested companies.

My first problem with the Federal Government was while I was in the Army in 1955. In the old days when you owned an unpatented mining claim you also owned the surface rights. Then environmentalists and Forest Service influenced Congress to take away surface rights to mining claims.

I was drafted into the service training at Ford Ord, California basic training camp. I found myself sitting on my bunk reading a registered letter from the Forests Service telling me they were taking my surface rights to my mining claims away from me back in White Pine County, Nevada.

I hired Jon Collins, an Ely Attorney to represent me sending him half of the ninety dollars a month I was being paid to serve my country.

Then it dawned on me I would never make it on just my Army pay trying to fight the United States Government.

I wrote about my difficult problem to the late house member Walter Baring. God Bless his soul! He sent a Government Mining Engineer out to examine my claims. The engineer reported back to Walter Baring that my claims definitely were legitimate and mineralized. He made the Forest Service leave me alone, and acknowledged the legitimacy of my property.

At one time we had over a thousand staked mining claims accumulated over the years, mostly in Eastern Nevada. All my working life I spent most of the money I earned exploring in Nevada. I was one of the more successful individual mine property developers. My company accumulated patented as well as unpatented claims. Since the hundred dollar fee went into effect we have not staked even one mining claim.

Then Congress passed the hundred-dollar fee and greatly expanded the bonding and other new regulations removing all or almost all of the small miners like myself out of the business of exploration in Nevada. It does not pay any more to explore in Nevada hoping you can find a company to lease your property to after you have made a discovery.

We have dropped almost all of our unpatented claims keeping only my patented claims.

About 18 years ago I financed my son a metallurgical engineer in the development of an assay laboratory, metallurgical testing laboratory and a mine supply business by the name of Legend, Inc. We employed between twenty and twenty-five people here in Reno in a property and building, which I purchased.

For the last two years the lab lost money due to a lack of customers. We have had to lay off most of our very good and loyal employees, close down our business and sell off our equipment.

As they are finding out in California if a company does not make money they can't hire people and pay their bills. It's impossible to explore for minerals or do and work on a mine if you are not making money.

There is very little exploration being done in Nevada now except as expansion of existing good mines.

Many companies have already declared bankruptcy in this state and many more are going to be bankrupt before this is over. Most of the mines are going to have to lay off their employees. Only a handful of the existing mining companies in Nevada are actually reporting company profits now.

I have myself personally paid hundreds of thousands of dollars to the State of Nevada in net proceeds of mine taxes over the years. Nevada's net proceeds income tax is a principal source of income to the state coffers

It is true that it is not just the hundred-dollar fee. The reasons for the pending doom in the mining business are cumulative. Bonding has hurt, having to spend millions of dollars in clean up to make a few acres that a cow can live on or a few jack rabbits is money spent that should have been left in the company to reinvest in and find another mine to keep people working.

We need a friendly government to encourage us, one that believes in private property rights.

To give another example: We spent hundreds of thousands of dollar a few years ago on a group of unpatented claims near Battle Mountain, Nevada. We did develop a small fairly high gold deposit. We then spent fifty thousand dollars hiring engineers to do a near feasibility study to accompany our patent application.

We applied for patent and the U.S. Government Mining Engineer Mineral examiner approved it. The Reno BLM office approved it and sent it to. Washington where it now sits, or perhaps it has been thrown away. It has sat now there for years and years with no signature. There is one claim in my patent pending and at this rate I'll probably be long dead before it is ever signed. All that money spent and an uncaring Government doing everything they can to harm the mining industry. A government that seems to no longer want mineral production in America. A government that dislikes the notion of private property ownership.

The least that should be done if you want to get this industry on its feet would be to eliminate or lower the hundred dollar fee to 5 dollars. The five dollars would be five times as much as the counties charge for doing exactly the same job. This five dollars would pay for the BLM office work, which is a senseless duplication of the exact same work the counties already do, and have done for a hundred years or more.

Thank you again for listening to me. I would answer any questions as best I can.

Chairman GIBBONS. Bill Kohlmoos, welcome. I apologize if I mispronounced your name, but we are anxious to hear your testimony.

STATEMENT OF BILL KOHLMOOS, PRESIDENT, BARIUM PRODUCTS AND MINING COMPANY

Mr. KOHLMOOS. You pronounced it correctly and thank you Honorable Jim Gibbons for having this hearing and inviting us to present our testimony. I'm representing two entities, the Nevada Miners & Prospectors Association, which is made up of the independent miner, not the major companies, but the independent like Frank Lewis, who was one of the originators of that, and I'm also representing my mining company, Barium Products & Mining Company.

I have been in the business for 50 years. For 50 years, or back up, for 30 years I made a living. The last 20 years I haven't, and I, as of last week, I was losing claims, dropping claims, losing leases. Mining companies that had a lease on one of my properties would drop it and go out of business or go overseas. I was losing until I had one property left, a good gold mine leased to a large company.

The reason is many things, but governing mining we have the market price. We have seen the price of gold go down and it has hurt. We also have the rules and regulations. Now, when FLPMA was passed in 1970's, it was policy, and policy is not exact, precise at all.

A policy says this is what we think and the bureaucrats can go ahead and make their rules and regulations and say, "Oh, it is policy." We have come up against that many, many times. It is policy, if that means anything, so we have the market price, we have the

rules and regulations, and the rules end up as costs. We have the costs of operating, buying fuel, and paying our employees, so there are many things to running a mine, but the rules and regulations now are the more dominant of all of our costs.

Now, we also have a problem with the people we deal with that are enforcing these rules and regulations. The report prepared by the National Academy of Sciences was mentioned. It was a good report. They said (and I attended their meeting here in Reno) they said that the laws do not need to be changed. There are several changes they recommended in the way things were done, but they didn't have any new laws to propose. It was a good meeting, well attended.

The next day, the very next day, there was another meeting (and the National Academy of Sciences as it was pointed out were prestigious people, professors and knowledgeable people in the business) and the very next day there was a second meeting held at the University, and that was held by Solicitor Leshy, and he started the meeting by standing up in front of the crowd and saying, "My name is John Leshy. I'm a lawyer. I'm a Harvard lawyer. I'm a Harvard lawyer who is a Solicitor of the Department of Interior. I'm here to tell you what we are doing."

He said that the NAS report was an excellent report and we are going to make every change they recommend. We are going to change the laws. We are going to do this, we are going to do that.

And then he said now one of the things we are doing is stopping the patenting of mining claims. He said, "We put a bill before Congress to change the mining law and Congress was made up of Republicans who couldn't understand and so we went around them. We passed a moratorium on patenting mining claims, and this moratorium expired after a year and we renewed it, and we renewed it again last year, and we are going to renew it every year."

And then Leshy bragged, he said, "That is how we get around Congress. That is how we bypass the laws. We just put a moratorium on it."

Leshy is typical of what is causing a lot of our problems in mining. It is the people we are dealing with. We have to have better communications and better people in the jobs.

Two years ago we saw how Gloria Flora was complaining to the press everyday about how the public hated the Forest Service and how they couldn't get a motel room, they couldn't buy gasoline if they were a Forest employee, and she went on and whined and complained and cried for months and everyday the newspaper put it on the front page.

She was agitating a situation. She was making it ten times worse. It wasn't that bad at the beginning. Sure, there might have been an individual case where somebody got snubbed, but so what, that is life, but she made a big thing out of it and then she finally left. But at the same time she was doing that, I had a Forest Ranger in uniform in a Forest Service truck try to kill me two times.

That is what was happening. We are dealing with people and we have to have better communications, get along a little better and understand each other. We can't have people crying that everybody is against them. We can't have people like that ranger. We have to work together and bring things out.

So, anyway, I never mentioned that before and I don't know that I should have now. We are opposed to the current and/or proposed new rules and regulations and additional fees. It used to be you could stake a mining claim, pay a few dollars to record it, and the annual fee was $100 which you put into the ground developing the claim, exposing ore, getting the property ready to mine. That was your annual fee. You did work on the ground.

Now we have to pay $100 to the BLM. The first year, the very first year that went into effect, they made it retroactive for $100 for the year before and $100 for the coming year, so you had to pay $200. I had 1,100 claims. I would have had to pay $220,000 out of my pocket to the BLM just to hold those claims. I couldn't do it. There was no way.

Some of my claims were leased to companies and they paid for part of the fee, when that started I dropped most of my properties. Since then I have dropped all of them. I had been earning a living in mining for 30 years. The last 20 years, nothing.

Last week I had just one property leased out. Yesterday I got a certified letter, the company was going out of business. They dropped the lease. I don't get any payment this year. I have got the claims back. If I want to keep them, I have to go pay $100 per claim on 80 claims. I can't do it.

The company is gone. My income is zero. That is the end. That is all there is for people like us. I heard the fat lady sing. But please tell us she was wrong, we are going to start all over again and do it right.

[The prepared statement of Bill Kohlmoos follows:]

Statement of William B. Kohlmoos, President, Nevada Miners & Prospectors Association, Barium Products & Mining Company

A learned treatise on minerals exploration, mining, milling, and smelting was written in the year 1556 by a man named Georgius Agricola. He reviewed mining work done by the Greeks and Romans, and the ancients before them. He wrote:

> The art is one of the most necessary and the most profitable to mankind. Without doubt, none of the arts is older than agriculture, but that of metals is not less ancient; in fact they are at least equal and coexistent, for no mortal man ever tilled a field without implements. In truth, in all the works of agriculture, as in the other arts, implements are used which are made from metals, or which could not be made without the use of metals; for this reason the metals are of the greatest necessity to man. When an art is so poor that it lacks metals, it is not of much importance, for nothing is made without tools.

In a popular book titled "Stones of Destiny", author John Poss takes the reader from the time of man in prehistory to man on the moon, and shows how world history has been influenced most dramatically by man's quest for minerals and metals. It is a book of conquerors—Caesar, Charlemagne, Cortes, and Pizarro, spurred on by visions of gold, silver, and base metals. Wars were fought for land which contained metals. In 490 B.C. the Persians, Greeks, and Asiatic hordes were constantly at war over the riches of the mines of Laurium, owned by Athens.

A U.S. Congresswoman from Manhattan, Carolyn Maloney, introduced a bill in 1993 designating 16.3 million acres of wilderness to be locked up in Montana, Idaho, Wyoming, Washington, Oregon as "unoccupied bison habitat." A group of mining supporters visited her office to protest the bill and were told unsympathetically by the congresswoman's aide, "I know that mining is important to you out West, but we don't use much metal in New York. In fact, most of us don't even own a car."

Several years ago I attended a three-day world-wide symposium on chromium held at Pullman, Washington. Representatives from all over the world, including Africa, Turkey, and Russia, attended and presented papers. It was emphasized in the symposium that very little is known of the subject here in the United States by

industry, by the U.S. Bureau of Mines, and by the U.S. Geological Survey. It was also pointed out that the U.S. is totally dependent on South Africa for its chromium, and should that source be denied there would be grounding of U.S. Air Force planes and commercial airliners within two weeks. The metal is essential to the heat resistance of the blades in a jet engine. The metal is classified both Strategic and Critical. I own a large deposit of this mineral but have been restricted in its development by Federal regulations.

During World War II the mining industry in the United States was active and quite essential to country's survival. After the war, major mining companies, small mining companies, and individuals were able to prospect for minerals, stake mining claims on mineralized areas, and mine for ore if discovered. This continued through the 1950s and 1960s. In the 1970s the atmosphere began to change.

Starting in the mid 1960s a bill proposing absolute bureaucratic control of all Federal lands was proposed in Congress. It was defeated. Each year the bill was reintroduced and defeated. After a while the ideas being proposed appeared to be neither new nor radical, and finally in 1976 the bill passed. It is known commonly as FLPMA, pronounced "flipma". The proper name is Federal Lands Policy and Management Act, 43 U.S.C. 1712.

That bill set policy. Policy is a broad, all-encompassing license for bureaucrats to do whatever they want and pass rules and regulations at will. They merely justify their actions by saying, "It's policy."

The resulting new rules and regulations have had a severe impact on the production of the natural resources so vital to the people of the nation.

Many ridiculous new rules were developed as a result of FLPMA. For example, I owned a large barite deposit named ANN at Northumberland, Nevada. Barite is vital to the oil well drilling industry. Dresser Minerals, a major barite producer, and I had spent a total of $5.5 million dollars in developing the 11 million ton barite ore body. There were 30 miles of roads and 277 drill holes of six-inch diameter by 400 feet deep. The holes were plugged by large cement cones and covered smoothly with dirt. A Forest Service Ranger, Don Crompton, said in a written citation that he wanted all holes plugged solid with cement from top to bottom. He had found one hole where he could insert a stick the size of a pencil, between the cement plug and the side of the hole. He said a mouse could fall down the hole and get killed, and he was here to protect the environment and that included the mice. He also wanted a pile of dirt 6 feet high by 20 feet long across the road, every 50 feet, all along the entire 30 miles of road! That would make 3,168 such piles, for a total of 2 million cubic feet of dirt piled up. Not only would his demands have obliterated $5.5 million worth of development work, but it would cost me an estimated $850,000 to accomplish. I asked him how I could get into the property to mine the ore if the roads were blocked. He said he didn't want to see me mine it.

I had to go to my congressmen, the Mountain States Legal Foundation, and the President of the United States to get the USFS stopped.

The Forest Service couldn't let me get the upper hand so they falsely charged me with a bunch of violations of rules on the Spencer claims near Pete Summit. Included were unauthorized bulldozing of roads, cutting open trenches, failure to cap drill holes, and wanton destruction of the environment.

In a meeting in the Austin USFS office, District Ranger Mont E. Lewis stated that he had driven to my "Bronco Mine" the previous month and inspected the property. I had a tape recorder sitting on the edge of his desk in plain sight and with his permission. I asked him how he drove to the mine. He said up the one and only road into the mine. He said he had driven to the mine and examined the ground before I started my work. It was on the tape twice. In a meeting with higher USFS officials in the Reno office several weeks later I played the tape and then I pointed out to Ranger Lewis that the road to the mine had been washed out and was impassable for the past two years, and therefore he was lying. It didn't faze him a bit. This is the kind of people we were dealing with.

In 1976 the brand new Environmental Protection Agency, wanted to flex their muscles and show the country how powerful they were. They needed publicity. The EPA decided to close down Kennecott Copper Corporation's mine, mill, and smelter near Ely, Nevada. For 70 years this open pit mine had produced 10% of the nation's copper and it still had proven reserves for another 50 years of production. The EPA claimed that the sulfur dioxide in the smelter stack emissions was causing a high incidence of pulmonary illness among the residents of McGill and also was destroying vegetation within a 50-mile radius.

Kennecott's lawyers fought a good battle, and Nevada's congressmen came to their aid, but the EPA had the power of a Congressional act behind them. They held public hearings in Ely, but their hearing officers rudely talked, read magazines and newspapers or slept and snored during the giving of testimony.

The EPA refused to listen to testimony from third generation residents of McGill that they suffered no unusual pulmonary illnesses, and that they considered the sulfur to have beneficial medicinal values. The EPA also refused to accept testimony or physical evidence that there were lush fields of alfalfa, vegetable gardens, lawns, and flowers growing within the immediate vicinity of the smelter. They refused an invitation to drive 10 miles to see the vegetation themselves. Their response was like the old saying, "I know what I want to believe. Don't confuse me with the facts."

In the formal hearings before the courts the EPA submitted completely falsified reports, and when challenged as to the validity of their statements, they merely submitted additional false data. The Environmental Protection Agency used a voluminous report by a medical doctor who had studied the people living near smelters in Tooele, Utah, and McGill, Nevada. The report proved that people living near smelters suffered increased rates of pulmonary diseases and cancer, and had shorter life expectancies than people in other areas. The statements in the report were backed up by detailed medical records and statistics.

During the hearings Kennecott lawyers introduced evidence which proved that the learned doctor had never left Washington, D.C., had no field workers, and had gathered no facts. The entire report had been concocted in his office back East and was nothing but lies. The medical records had been completely falsified.

The "Arizona Republic", Phoenix, Arizona, reported,

> The story of Dr. John F. Finklea, a former research official in the Environmental Protection Agency, reads like a Grade-B movie about a mad scientist. And it's no less chilling.
>
> It casts doubt on all the research of the EPA and on all the EPA regulations . . . the monster that Dr. Finklea created is going to cost the nation $11 billion. . . . A group of scientists at such prestigious universities as Harvard, Columbia, and MIT joined in a report which said that many EPA regulations are not only costly but unrealistic, as well, and that many will do more harm than good.
>
> If there is one zealot like Dr. Finklea in the EPA, which, incidentally, has become the largest regulatory agency in the government, ...

The matter was hushed up, but the damage by inference had been done. The EPA leaders persevered, and in 1978 Kennecott's smelter was shut down, never to open again. A town of 12,000 people went into shock, and poverty. Within a couple of years most of the other smelters and all of the foundries in the U.S. were also shut down by the EPA. And the United States turned to overseas to buy more of the copper it needed. But first it had to pay the dictators of the small countries to produce it. Agreed, we had long bought copper from Chile, but now we bought more. And then the Chilean government run by President Allende stole the copper mines from the American owners.

In March of 1989 I attended a public meeting of the Geological Society of Nevada where the keynote speaker was a prominent attorney speaking on the injustices being imposed upon us by the courts in the name of environmental protection. He said that the General Accounting Office (GAO), which is supposed to be an "Auditing and reporting Committee" of Congress, was actively running, managing, and dictating to various departments of the government, including the BLM and USFS. At the same meeting there were many comments voiced that we are surpassing Soviet Russia in the volume and severity of bureaucratic injustices.

I have been in the mining business for 48 years. My business has been to prospect for and discover a mining property and then improve and develop it for sale to a major company. Over the years I acquired 41 good properties. Millions of dollars have been spent on geologic and geochemical mapping, drilling, and development work, getting these properties ready to mine. And now I am being literally taxed out of business. Mining in the United States is rapidly dying. Many major companies are moving overseas. The incentive to do business in the U.S. has been removed.

The "War For The West" read the cover of Newsweek magazine, September 30, 1991. It said of cowboys, "They've assaulted the entire system of nature." and ranchers are "—the enemies of the environment." Logging, it said, is guilty of excessive denuding of the forests, and mining is stripping the gold from the land and not paying the government anything for it.

The author stated that miners are "saturating" the ground with cyanide and using their mining claims to grow marijuana. The power companies are killing the salmon on the Columbia River just so they can send electricity to Disneyland and make a big profit. Even the ski resorts were criticized for using the land.

The 22 pages of attacks concluded with the comment that the West must learn to cooperate (with the government and environmentalists), and "When that day comes, the West will be won."

"The Great Gold Scandal" was emblazoned across the cover of the U.S. News & World Report October 28, 1991, less than a month after Newsweek's declaration of war. The magazine's senior editor, Michael Satchell, wrote that, for a pittance the mining companies can extract billions of dollars worth of minerals from public land—and that there are no requirements for environmental protection and reclamation, and that one can buy all the land he wants for $2.50 per acre. It was all gross, blatant lies. Nothing he said was correct or true. It was obvious that Mr. Satchell knows nothing whatsoever about the subject which he so eloquently lambasted.

It would seem that it is no unrelated coincidence that two major magazines come out with two major feature stories on the same subject at the same time and with each presenting the same lies in the same manner.

The statement that miners can buy land for $2.50 per acre is repeated frequently by the environmentalists. If that were true why haven't they bought it all and made a big park? According to a paper prepared by the U.S. Bureau of Land Management, the truth is that you must spend approximately $45,000 in preliminary study, mapping, environmental study, and other paper work over a period of several years before you can acquire one single acre of land. And there must be a proven deposit of minerals on the land. It is only the final paper document which costs $2.50.

Monday, November 8, 1999: In Reno, Nevada, there was a presentation of a report on a two-year study conducted by the National Academy of Science, Washington D.C. The report's title was: "Hard Rock Mining on Federal Lands." Perry Hagenstein was the Chairman of Committee and also Chairman of this meeting. In summary, the report concluded that all current mining laws were working satisfactorily and only a few minor changes in procedure were recommended.

Tuesday, November 9, 1999: A meeting was held at the Orvis School of Nursing, University of Nevada, Reno. It was conducted by John Leshy, Solicitor, Dept. of Interior. I sat in the meeting and took notes:

He said, "Ahhhmmm a lawyer. Ahhhmmm a Harvard graduate. Ahhhmmm a lawyer, a Harvard graduate. Ahhhmmm a lawyer, a Harvard graduate, summa cum laude.

"Ahhhh worked with Udall and we tried to defeat the 1872 Mining Laws but Congress was controlled by the Republicans and they couldn't understand.

"Ahhhh worked with President Carter and we tried to defeat the 1872 Mining Laws but Congress was controlled by the Republicans and they couldn't understand.

"Ahhhhm working now with President Clinton and Udall and we tried to defeat the 1872 Mining Laws but Congress was controlled by the Republicans and they couldn't understand.

"One thing we did manage was to stop all patenting of mining claims. Congress wouldn't change the law so we put a moratorium on all patenting and each year we renew that moratorium and we will continue to do so into the future. It's not right that a mining company, especially one from Canada, can patent a mining claim for $2.50 and then take $10 billion out of the ground and pay us nothing for it.

"That report by Perry Hagenstein, (Hard Rock Mining) was right on. They suggested a number of changes to be made and we will do that by passing the necessary rules and regulations."

It's no coincidence that Solicitor Leshy was going around the country giving these talks wherever, and one day later than where Hagenstein presented the National Academy of Science report on Hardrock Mining which said the 1872 law is OK. Leshy admitted that he was circumventing Congress and the law. In fact, he bragged about it.

Today, in the year 2001, there are numerous state and Federal requirements on mining activities. Some are necessary. Some duplicate each other. Others are excessive or unnecessary. The Federal forms include:

Purchase, Transport, or Storage of Explosives
Use of BLM-Administered Land
Use of BLM-Administered Land Under Wilderness Review
Temporary Use of BLM-Administered Land
Right of Way for Electric Transmission on BLM-Administered Land
Road Access (R/W) on BLM-Administered Land
Notification of Commencement of Operation
All Uses of National Forest System Land
Activities in Wetlands and/or Waters of the U.S.
(Includes Dry Washes, Creeks, Lakes, Etc.)

Endangered Species Act Compliance
Building Permit
Business License
General Plan
Special Use Permit
Zoning Change

Special studies must be made before any activity can be started:
Archeology Study
Wildlife Study—and many more.

Today we are told that mining is not necessary. Three branches of the government, the U.S. Forest Service, the Bureau of Land Management, and the Environmental Protection Agency, have set so many policies, rules, and regulations that all but a few of the mining operations which had been operating in Nevada have been forced to shut down or have moved overseas.

The General Accounting Office occasionally puts pressure on the USFS and the BLM and forces them to get tougher on mining. The GAO ostensibly acts as a watchdog for Congress by overseeing how the departments handle their budgets. In real life they tell the Forest Service, BLM, and other departments how to do their job by first advising the department what it should do. If the response is not satisfactory, the GAO blasts the department with a barrage of caustic press releases, criticizing the department for its "misconduct".

A collection of several dozen such press releases which appeared during the one single year of 1989 revealed a strong pattern of enforcement, usually with immediate results. Several of the directives of the GAO demanded large increases in fees and stricter rules and regulations to more tightly control free enterprise.

For example, the Forest Service and BLM were told by the GAO to cut farther back on grazing allotments, and they did so. The BLM was ordered to charge the mining industry exorbitant fees for items which had never before been subject to fees.

During those years, if a property were sold, the fee to file one single piece of paper which did nothing but transfer title to the claims would cost $4,000.00, even though the claims may have just been staked and proof of an economical body of ore had not yet been established.

The changes which had been wrought were dismaying. The U.S. Forest Service was ruling with complete unreasonable control, and there had been a large increase in the number of their employees. Many of the new people were inexperienced, young college graduates who had been born and raised in the cities of the East, and had no comprehension of what the West was like. These young Forest Rangers were now in charge of a tremendous area of Federal land. There were so many of them around that when I drove down the highway between Austin and Tonopah every third vehicle I passed was a government pickup. I would make a written list as I drove along, and as I'd only pass 25 vehicles in a 100-mile trip, it was easy to do. On Saturdays and Sundays there was never a single government truck.

Nevada is 87% Federal land, and only 13% private. Most of the private ground is around the cities, or is railroad land. That means that wherever one goes out in the hills, he is most likely on land controlled by either the BLM or the USFS.

To get around in the back country one must use a four wheel drive and travel on an extensive system of old dirt roads. Many of these roads had been constructed and put into use in the 1860's and 1870's. They have been in use for 130 to 140 years. Now, in order to keep people off the land, the Forest Service has closed many of the dirt roads. This was illegal. They denied the use of bulldozers or graders to repair roads after they washed out. No maintenance, no road. They required miners to submit a "Plan of Operations" to do any work on their claims, even for that work which was required by law as assessment work. When a miner submitted a plan and it was approved, the Forest Service stipulated that when the work was done the miner would have to dig up and destroy the access road. This was done regardless of who owned the road, or even though it was a public road which had been in use for 140 years. By using this method the Forest Service obliterated many established and useful roads from the public domain. With the submittal of an Operating Plan was required the posting of a cash bond, sometimes as much as several hundred thousand dollars. The USFS put gates and barricades on roads. They declared large areas to be closed to off-road travel, and then they published maps which did not show the existing dirt roads. Thus the entire area was closed off. The rules forbade travel in many areas, even by bicycle. One could not go to the toilet in some areas, but had to carry his excrement off in a bag. Even the droppings of your horse had to be picked up and removed. Grazing of cattle was no longer permitted.

The houses and homes of miners were burned, even though they had been on the property for several generations and were antiques. The Forest Service destroyed a beautiful 100 year old cabin on my property at Topaz. They destroyed my cabin at Belmont, and a third at the Bellview property near Elko.

The Forest Service now has a large number of Rangers carrying guns, and they arrest anybody they find violating their rules. In California there were several cases where a party of miners stood their ground and had a shooting war with dozens of Forest Rangers across the river. These incidents were never reported by the press, but were covered in the trade journals and the California Mining Journal.

At a public meeting in Austin in 1988, Larry Raley, the Forest Service Ranger, told the people to carry notebooks and write down and report the names or license numbers of any people whom they saw violating USFS rules. Raley threatened that if we didn't do this spying on each other, he would close off more large areas. As he talked to the group he had two armed guards standing one on each side of him, for protection from possible violence. The guards stood there wearing two sixshooters each, with feet spread apart, arms folded, and glaring at the audience. Raley was fearful for his safety. A week later in a meeting with the Forest Service in Reno, he lied, denying that he had any armed guards at the meeting, or that he had threatened us with additional closures if we didn't snitch on our friends. I had it all on a video tape, and 40 witnesses saw it happen.

In October of 1992, after I had already done several tens of thousands of dollars of required and beneficial assessment work on my mining claims in Nevada, the Bureau of Land Management (BLM) abruptly changed the rules of the game. They said that in order to keep mining claims valid for the coming year all claim holders would have to pay a $200 per claim tax before October 1, 1993. I had more than 1,100 claims at the time, and would have to pay $220,000 just to keep my claims. I didn't have that much money, and if I did, some of the claims needed a lot of exploration work to prove that they were worth that much. This new tax came with no advance warning for budgeting purposes. It was discriminatory and it was retroactive. We had been paying the BLM an annual fee of $5.00 per claim. Now, all of a sudden, we have to pay $200. That's an increase of 4,000 percent!

Everybody in the business was in shock. Nobody, not even the major mining companies, could afford to keep all their claims. When the time to pay arrived, I kept only a few claims plus those that were leased out. I dropped everything else. Some of the large companies dropped up to 50% of their claims.

In 1993 the BLM in Tonopah, Nevada, issued a new Management Study/Environmental Impact Statement (EIS) according to which they would more strictly control the land. The report states that they would take private land from the owners, including the Locke family home with their private cemetery. The BLM would take water rights from the ranchers, stop grazing, close dirt roads, and strictly control or stop mining. Much of the plan was to set policy.

Although the date on the first page of the plan was June 4, 1993, very few people were privileged to see a copy or even be aware of its existence until September or October.

The BLM held a public hearing in Tonopah on August 26, 1993 to present the plan. If there were no objections the plan would be implemented immediately. I heard about the meeting by accident just ten minutes before it started.

I knew all of the forty-two people who attended the hearing. Included were ranchers, small miners, major mining companies, construction companies, equipment operators, sportsmen, hunters, fishermen, outdoor enthusiasts, off road vehicle operators, and others from many walks of life. Many were second and third generation Nye County residents and property owners.

A number of people present said that they had only received a copy of the report or heard about the meeting the day before, and then by word of mouth and only by accident. They felt that if proper notice had been given there would have been 500 people present to oppose the plan. One mining man in Tonopah whom I knew told me that he was told by a BLM official the day before the meeting, " Oh, it's just a small meeting. It's insignificant. You don't need to bother attending." And he didn't.

The two inch thick, bound report offered four separate alternative plans. Plan 1 supposedly proposed no changes. Plans 2 and 3 contained drastic new bureaucratic controls. Plan 4 was presented as a moderate program offered as a compromise. However, Plan 1 and 4 each contained fine print and clever wording which made them as dangerous as 2 and 3.

The ranchers present were violently opposed to plans of the BLM to take away their water rights and land, but they were not allowed enough time to say all they wanted to say. The BLM only allowed a person to speak for three and one half minutes and many were cut off in the middle of a sentence. When the moderator

stopped Joe Fallini from speaking after he called them a "bunch of damned liars, liars, liars", the entire audience stood up and stomped their feet and yelled, "Let him talk." Many were shouting obscenities and threats of physical violence. One person yelled, "If you take my land you'll have to come shooting." Almost the entire group was extremely emotional and strongly opposed to the plan. There were many complaints that the maps were of poor quality and concealed many things, and that there were no maps of land status, water rights, or roads.

Most of the people who took the floor demanded a six month extension of the deadline of October 1 for submitting comments. Of those present, every single one who requested the opportunity to speak was strongly opposed to the plan.

The BLM had deliberately avoided press coverage of the meeting. No report of the meeting was ever issued, so only those who were present knew what happened. Except for the few people in attendance, the general public was never made aware of the plan or the meeting's comments and emotions.

Prospectors in the field may search for a lifetime and find nothing. Or, they may find one or two prospects but after years of hard development work determine that they cannot produce a profit. Only a very few prospectors have the ability, skills, eye, and luck to discover a profitable mine. And only one in many thousands of these mines will subsequently develop into a winner.

Following is a list of mining properties located, mined, or abandoned by myself since 1952. This list is presented in order to show that even with luck and skill the profit is elusive.

(Note: In mining circles, the term "point 0 three" means that in one ton of ore there is only 0.03 of an ounce of gold.)

Belleview Gold—Plus one million tons 0.03 oz. gold. Leased for 25 years to a mining company for royalty. Never mined because of government regulations.

Betty—Large gold anomaly blocked out. Spent $3,000,000 in geochem and drilling. Leased to major mining company. Dropped lease due to government regulations.

Delsa Mercury—Large high-grade mercury deposit. Mined by Kohlmoos 1956 to 1962. Invested $30,000. Very small profit.

Ingie Gold—Extensive exploration on property. Drilled by major international mining company. Large area of high gold values. Dropped due to government rules and regulations.

Kay Barite—Leased to major company. One million tons barite drilled and blocked out. Possible 10 million tons, plus unknown gold values. Never mined due to regulations.

Long Claims—1968: Kohlmoos was the first to originally discover and stake claims in an area which subsequently developed into the famous producer, the "Sleeper" mine. Extremely rich and large. Kohlmoos lost the property to a large mining company with a team of lawyers. Although the assessment work had been performed, a mistake was made in the county filings.

Northumberland Barite—Ann claims. Major company spent + $5.5 million in drilling over 15 year period. Blocked out 11 million tons barite Possible 50 million tons reserves. Estimated gross value of ore in the ground: $1 Billion. Never mined because the U. S. Government allowed China to ship barite to U.S. duty free.

Northumberland Gold—Rated 7th largest gold mine in U.S. several years. Sold to major mining company.

Nura Uranium—1952: Mined and shipped 1.3% ore. No profit.

Oil Lease—New oil field, Eagle, Alaska. Sold to Texaco. $10,000 profit.

Summit Canyon Barite—1965: 300,000 tons barite shipped. Small profit.

Verde Cobalt/Chrome—The Verde claims (Betty et al group) contain a vein of nickel, cobalt, and chrome. Vein is between 100 and 1,000 feet wide by 4½ miles long and more than 300 feet deep. Invested more than $3,500,000 in drilling. This ore is classified as both Strategic and Critical. No companies interested due to Federal rules and regulations.

Various Prospects—Ace, Spencer, Wash, Roy, Gold Thrust, Chip, Frenchman, PAL, and other gold prospects. No work done because of Federal rules on permitting, bonds, and studies of archaeology, wildlife, environment, water, and much more.

In conclusion, the United States of America is dependent on minerals to provide its people with food, clothing, homes, schools, transportation, highways, airplanes, military forces, books, television, and everything else we have beyond our bare skin. The mining industry provides all of this. Many people are not capable of understanding the complex system of supply and demand.

The Federal Government has seriously damaged the minerals industry by passing rules and regulations which:

—Close roads;

—Declare millions and millions of acres of mineralized ground as wilderness areas thereby preventing human activities;

—Require numerous detailed studies costing millions of dollars and years of time before a rock can be moved;

—Post bonds amounting to hundreds of thousands to millions of dollars;

—Submit an excess of plans, programs, maps, and detailed data; and so on.

And then, after many years of exploration to find a target, develop it and prove an orebody, and then spending big money to take all of the above steps, the project can be denied because of a technicality. The individual prospector can't do all of this, and neither can the small to medium size mining companies. That is why they are all shut down and out of business. This leaves it to the few wealthy major companies. And today, many of them are moving overseas.

In closing, what will happen when the U.S. goes to war again? It's not "if", but "when" we do. When that happens we will have no minerals production to depend upon.

The minerals industry is a large, sleeping giant. It can't be turned on and off at will. It could take many years to find mines, build mills and smelters, find experienced people (if there are any left), and get into production.

A healthy mining industry is essential to the health of the nation.

Chairman GIBBONS. Thank you. We always save the best for last, don't we? Let me again thank you and ask a few questions. We have to be out of here at 3:30 when we only have this building from 12:30 to 3:30 and we are rapidly approaching that time, and before I end this I wanted to just make some brief questions to these three witnesses.

Mr. Taylor, I do not take your testimony to say that we should abandon the efforts we made so far to minimize environmental damage with mining. I don't think that was your direction and I think you made it very clear that mother nature is going to probably even out everything over the long run through some geologic occurrence, but I do think that you were saying that it is sound science that we have today and evolution of science helps us work within the environment, helps us work within mother nature for the development of these mines to keep them active, keep people employed, keep this country in the financial state that it is in today. Did I characterize your testimony?

Mr. TAYLOR. That is correct. I think what we have done is good and what we will do in the future will be better, but there is no sense trying to put us completely out of business.

Chairman GIBBONS. Right.

Mr. TAYLOR. Using nonscientific emotions.

Chairman GIBBONS. Your job is to provide temporary geologic or technical help for some of these companies, and tell me what you see is the opportunity, and if you are providing temporary technical services to say Latin American countries right now, and in them would you tell me what the prospects are if you are for the, in the experience, for say women geologists getting employed in Latin America.

Mr. TAYLOR. One of the questions that used to be top on our list when interviewing people for full-time, short term assignments, whatever, was where they went to school and what kind of degree they had, and that has changed to Se Habla Espanol, you know.

The prospect in the exploration side where we started our business, we do now mostly mine site work, has essentially gone away. One of our clients was describing to me that major mining companies, he felt that about 40 percent of their budget for exploration had completely evaporated, 40 percent was being spent in Latin

America and the 20 percent left might be spent in the United States.

That 40 percent opportunity that has evaporated pretty much wipes out the, any kind of possibility of growth in the American mining market. The 40 percent that is now being spent in Latin America and other countries, we as a mining industry have a responsibility to those countries to hire indigenous people and to help them. It is their country. That very drastically curtails the opportunities for the American miner, so it is caught there.

And the last part, as you heard Bill, if they don't kill us, we may starve to death, so I would like to say something was extremely bright and happy, but as you can read from Borden's testimony I believe we have, we reached a point where the investor has no real reason to invest in us because we can't guarantee we will ever make a penny, that we will ever get there. It is too much of a moving target.

The employees are extremely disheartened. It is very, very difficult, and the only thing I think we can look forward to is the natural resiliency of the folks that have always worked in the mining industry and hope we can weather through what is the worst thing that happened to us in the last 35 years.

Chairman GIBBONS. Mr. Lewis, you and Mr. Kohlmoos are probably some of the last remaining independent small mining individuals left in the state. Let me ask because you are a quote/unquote small miner are you exempted from any of the environmental regulations on any activities that you do as a small miner?

Mr. LEWIS. Fortunately, some 40 years ago I started purchasing patented mines and there is a five-acre exemption, which they are trying to do away with, by the way, that you can go in and do some exploration on your private patented property that has been very helpful to me over the years.

I'm not doing any exploration now of any consequence. I have got some property optioned out where exploration is going on. But I have got an exit strategy. When I bought these patent properties, I realized I can always sell them. I can sell them to people to build cabins on or just to hold a piece of land.

And if I do that what does that do to the mining industry? How are you going to go back into these areas in the various places that I own these various properties if somebody builds a house on it? You are going to ruin the mining business if I do that, and I'm trying to avoid doing that because I love the mining business, it has been mine and my wife's life, so—.

Chairman GIBBONS. Well, let me ask a question from you with regard to both you and Bill and this $100 claim maintenance fee, does the small miner exemption work?

Mr. LEWIS. No, it doesn't, because with 10 claims you don't, you can't have a mine. The only thing you can have is kind of a toy, and that is what they have become in places where I have observed them. They are a way for people in eastern Nevada that wanted to fool with it to keep those.

And I'm not all that much in favor of it, because in order to have a mine you need nowadays at least 100 claims, that is what the companies would demand, or 300, and so I don't think that that

does work, and I'm not, I have not become aware of anybody who held 10 claims that have been able to benefit from it.

Now, there probably are some, but I don't know who they are, and it wouldn't help me anyhow, because I have several properties where I have several hundred claims that are optioned out to other people, and so they are paying these fees, but not for long, because I can see the handwriting on the wall, and I was there, when I first started in this business years ago, there were no exploration companies at all in the state. They were all in South America. I reach back that far.

Now, my father-in-law was an old time prospector, my wife's father, and I didn't know it wasn't any good, so I got into it and I loved it ever since until recently.

Chairman GIBBONS. Bill, would you recommend repealing or lowering the mine maintenance fee claim for small miners or changing it or modifying it in a way that would take into consideration some of the financial considerations that you have already expressed?

Mr. KOHLMOOS. Absolutely. The claims I just got back from that company, the letter I got yesterday, it is 86 claims. I can't afford to pay $100 each on them. I have a barite property. Now, we produced barite for many years, Barium. It is used in oil well drilling.

When anybody gets some gasoline or you see a jet plane flying over burning jet fuel or a diesel truck going down the highway, that fuel can be traced back to it being helped out of the well or the well being drilled by barium. Barium is essential to drilling a deep well.

I have a large barite deposit, possibly the biggest one in the world. It takes 120 claims to cover it. I can't sell a pound of barite today because the Government gave China duty free import privileges. China ships barite into the U.S., so we don't mine barite anymore. I can't mine it and I can't pay the $100 fee per claim to keep more than 100 claims.

Fortunately, I have got by with having some lessees who have paid the fee and done the work, but we are getting to where that is ending and without any production for years.

But, no, as an individual and a small company, (Barium Products is a small company) we can't afford that $100 and then turn around and add another hundred dollars into developing the ground.

Chairman GIBBONS. Let me wrap this up, because we just passed the time and ask one final question to Mr. Lewis. You oftentimes hear the $100 claim maintenance fee stops exploration or development by small miners. Does that in any way suspend your ability to access your land, to do any development work if you could afford it?

Mr. LEWIS. I think that it is, as far as the smaller person is concerned the $100 fee prohibits them from even considering doing any exploration. I mean, it is just a punitive, it is a punitive thing.

The money we used to get in turning an unpatented property, the Federal Government now gets it all, because that is it. You might have got $100 a claim and that is about what you got as a down payment if you had a good property. And it is about what you could get per year as a small payment while the exploration went forward, and so if you pay it all, if you pay that basic fee to the

Federal Government, the individual has no incentive to go out and try to do it.

Chairman GIBBONS. Well, what I was asking was, the $100 does not prevent you from going out upon your claim and driving your truck out there if you wanted and doing the development work, drilling it if you had to, if you went through the permitting process?

Mr. LEWIS. That is true, I agree with you.

Chairman GIBBONS. It is just an added expense.

Mr. LEWIS. If you want to, but it is just an added expense that takes the incentive out of the whole—we had a system here. We had a system here where the individual prospectors or geologists would go out and find a likely spot, looking in the old holes as I call it, and that is what I did all of my life. I looked in somebody else's old hole and find a mineralized area and stake your claims and then you can do your work. But now it is not logical to do that anymore because of the hundred dollar fee and these bonding and these other rules and regulations.

Chairman GIBBONS. Let me ask you, gentlemen, all of you, and, for example, anybody who has testified here earlier if you wouldn't mind writing to us with your recommended changes that would be considered or should be considered for making the changes to these regulations that you think would be helpful to maintain the small miner and how the small miner exemption should be amended so that it could work or does work for small mining, and with that let me again thank you, gentlemen, and thank you.

I know this hearing has been long and what my concern is, is for Corrie here, who has spent the last 3 hours diligently sitting there typing away and making sure that this hearing is heard. And I know there are some individuals in the audience that want to have their testimony heard as well, but let me assure you that if you will submit your testimony to us, we will incorporate every word of it in our report as having been given in this hearing and it will be part of our report just as well.

I know there are a lot of people out there that would have liked to have the time to do this, unfortunately we are limited both in our time and our resources and ability to do this, so if you would like—

Bernice LALO. Well, I understand, but I don't think that there has been any Native Americans speak here. I believe that it has been mostly one sided. I would like to speak at least 2 minutes of your time, just 2 minutes, and I can give you—.

Chairman GIBBONS. Let me ask Corrie, do you think you can endure 2 minutes? We are due out of here at 3:30.

Bernice LALO. I understand that.

Chairman GIBBONS. In great deference to you I will do that and I appreciate that, and also if you have written testimony you want to submit, we would be happy to take that as well.

Bernice LALO. Okay.

Chairman GIBBONS. So if, you know, if you want to take the mike, we will certainly extend this for you and appreciate your coming and if you will identify yourself for the record so that we can have it incorporated.

Bernice LALO. Bernice Lalo, New Western Shoshone. (Native American language was spoken).

I'm Bernice Lalo. I'm Western Shoshone. We have lived on this land for thousands of years. I want to address the Congressman, distinguished audience, and Americans in general.

The Western Shoshone people have a culture that has lasted thousands, millions of years, and we started and we have lived through many genocidal Federal acts, such as the Boarding School Act, the Relocation Act, the Military Act, and we were finally given citizenship in 1924 in a land where we had and have had for thousands of years.

And let's talk about the stories that belong to the land. Let's talk about religion and this has been foo-fooed like it was not anything to base any kind of decision on, but let's talk about irreparable damage. Let's talk about genocide, because this is very hard, very much a part of us.

Let's talk about America the beautiful that everyone puts their hand over their heart and says purple mountain majesties. Well, when the mines come and when they go we have reclaimed hills. We no longer have purple mountain majesties.

So is this the kind of future that you want to leave for your children where there will be reclaimed hills and not the purple mountain majesties that is sung in your song of America the Beautiful? Let's talk about the future and talk about how will you be responsible. Will you be responsible or part of the people that are responsible for genocide?

When we, when the Euro, European people stepped on this land we were a billion in number. Now we are merely a thousand. Let's talk about the difference in cultures. We do not go to a religious site, only on Sunday. This is part of who we are, and our stories and things that we call, things that European Americans call mythology is part of us. It is our beliefs. We don't call your Bible mythology, so you should have the same kind of respect for us.

When the mining people leave, there are holes in the ground. The mountains are no longer there. We are left with degradation. We are left with polluted lands. We are left with nonexistent cultural sites, and we are left with the burials that have been taken out of the ground and they are shipped to State Museums where we have to go and claim them as unaffiliated remains.

This has been Shoshone country for centuries, so I want to bring your attention to the fact that we are a nation. We would like to be able to respect other people as nations, but we like for you as American people to respect the things. We don't expect you to leave this untouched like we have been, like people say we do. They say we want to leave it unclaimed.

We want you to be responsible. We want those waters where we can drink them, where we can swim in them, and that does not mean just Western Shoshone people. It means American people in general. That means everyone that is within this room, so when we are talking about 3809, it is not like some of the people said in here. It is uninformed people.

We speak your language. We have gone to your schools, but we still remain native, and those purple mountain majesties should mean as much to you as it does to us, so I'm leaving you with that,

and I know I didn't take more than 20 seconds, I didn't take 2 minutes, but I will tell you a story.

A long time ago I was born on a ranch near Bald Mountain and there was a rancher that came by and my folks were out in the fields. They probably now would call that child abuse, but we were independent, and so when this rancher came by and he probably said, oh, where is your mother and father? When are they coming home? And I said, oh, they will be back later. And when my folks came home, I told them you are not (Native American language was spoken), and you know what that means? That says I was the only one talking with white man. And you know I sounded like I really carried on a conversation, but that is part of who I am.

Right now I'm still the person that says (Native American language was spoken), but I would like for you to take that message to heart, and we do, we would like for the 3809 to be, contrary to everyone in this room probably, but we would like for it to remain, because you also and you especially have a commitment to the Native Americans and Euro-Americans and Mexican Americans and whatever kind of Americans you have, you have that commitment to keep a responsible mining.

We are not asking that you stop. We are asking for responsible mining, and we don't have to want to live with our children or our grandchildren up the road to say that we cannot swim in that river. We cannot drink from that river. We cannot go to that spiritual site. We want to be able to have that, but we also want to have it for the other Americans as well, because without those it is irresponsible mining. Thank you very much.

Chairman GIBBONS. Thank you. We thank all of you for that. Clearly we gathered some very important information here today and it is going to help our Committee do its job better, I guess better legislators in effect, and to all of you who spent the time here today this afternoon listening diligently and contributing to this hearing, I want to thank you and with that this hearing is at a close.

[Whereupon, at 3:44 p.m., the hearing was adjourned.]

[Additional material supplied for the record follows:]

1. Letter from Courtney Ann Coyle, Attorney at Law, on behalf of the Quechan Indian Nation of Fort Yuma, California, submitted for the record.

2. Letter from William Kohlmoos, President, Nevada Miners and Prospectors Association, submitted for the record.

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Chair Representative Barbara Cubin
Ranking Minority Member Ron Kind
House Committee on Resources
Subcommittee on Energy and Mineral Resources
House of Representatives
Washington, DC 20515-6201

July 23, 2001

Re: Correction to Testimony in Oversight Hearing on "The Effect of Federal Mining Fees and Mining Policy Changes on State and Local Revenues and the Mining Industry" House Committee on Resources, Subcommittee on Energy and Mineral Resources, Reno, Nevada April 20, 2001

Dear Chair Cubin and Ranking Minority Member Kind:

On behalf of my client, the Quechan Indian Nation of Fort Yuma California, we respectfully offer the following corrections to the record in the above-captioned oversight hearing. The Quechan Indian Nation is a federally-recognized tribe. We became aware of the hearing, and the written testimony offered by the Senior Vice President of Administration and General Counsel to Glamis Gold, only after finding the attached testimony posted on Glamis Gold's website. The testimony given at the hearing was very one-sided. It appears that no one was invited to give the other side of the story or to tell the facts about the Quechan people, their homeland and their traditional cultural practices that continue to this day. This is extremely disappointing to the Tribe. We hope that this oversight can be avoided in the future.

It is difficult to respond to each of the inaccuracies in Glamis' testimony, as they are many. It may also be inappropriate to address each of them as some of the assertions mirror those in litigation by Glamis against the United States in *Glamis Imperial Corporation v. Department of Interior and Bureau of Land Management,* United States District Court for the District of Columbia, Case No. 1:01CV00530 (filed March 1, 2001). Thus, we will only highlight here for the Subcommittee the baseless assertions most offensive to the Quechan people and offer corrections to the record. In the absence of accurate and balanced information, the Subcommittee could draw erroneous conclusions about the nature of the Quechan people, the lands at Indian Pass and the exact matters at issue in *Glamis Imperial Corporation*. Considering the character and resources of this individual location, the decision to deny this one proposed mine in this one location was the right decision.

In summary, Glamis overstates the benefits of its proposed mine without substantiation on the one hand, while inappropriately denigrating the well-supported environmental and cultural values of the site and sacred and historical tribal links to the area on the other hand. Astoundingly, Glamis stated that its proposed mine would have been "very benign environmentally." (*See attached,* "TESTIMONY OF Charles A. Jeannes" April 20, 2001 ("Testimony") pg. 4). Nothing could be farther from the truth. Glamis further asserted that that the FEIS identified "no environmental issues of note." Id. Such statements are as remarkable as they are untrue. The fact is that the FEIS itself found no less than three impact areas that were *significant and unmitigable*. These impacts, presumably of no importance to Glamis, included cumulatively significant impacts to ambient air quality (PM 10), significant unavoidable impacts to historic sites eligible for the National Register of Historic Places and significant and unmitigable impacts to visual contrast.

At issue here were unmitigable impacts proposed in a Congressionally-designated Class L (Limited Use) area within the Congressionally-protected California Desert Conservation Area ("CDCA"). This is not your garden-variety public land. With respect to mining in the CDCA, Congress provided:

> Subject to valid existing rights, nothing in this Act shall affect the applicability of the United States mining laws on the public lands within the [CDCA], except that all mining claims located on public lands within the [CDCA] shall be subject to such reasonable regulations as the Secretary may prescribe to effectuate the purposes of this section . . . Such regulations shall provide for such measures as may be reasonable to protect the scenic, scientific, and environmental values of the public lands of the [CDCA] against undue impairment, and to assure against pollution of the streams and waters within the [CDCA].

43 U.S.C. Section 1781(f). Moreover, the Quechan Tribe's reservation, the place where they now live and work after having eight hundred square miles of their homeland taken from them by the United States Government, is a mere twelve miles from the site. Thus, adverse and unmitigable impacts to local air quality, local irreplaceable cultural resources and intact local scenic vistas are of great importance to tribal peoples, if not to Glamis.

The Subcommittee also should know that the project record disputes the appropriateness of the mine with respect to other resources and values, including biology and water quality and quantity. Far from unfairly and unpredictably introducing an "entirely new legal standard" to be applied to lands within the protected CDCA. (Testimony, pg. 5), Interior appropriately followed *existing* statutes and Plans governing this special, protected area. (*See,* 1976 Public Law 94-579, Title VI Designated Management Areas, CDCA Section 601(f); 43 U.S.C. Section 1781(f)). Thus, contrary to Glamis' Counsel's insinuations, any controversy over the newly amended 3809 mining regulations is unrelated to the Glamis mine denial: the mine was denied without reliance on the new regulations. (Mine Record of Decision ("ROD"), BLM Case File No. CA 670-41027, responses to comments, pg. 86).

Glamis characterized the physical resources at the site as "unremarkable" and lacking in physical resources. (Testimony, pg. 4). Once again, nothing could be farther from the truth. In

fact, the area contains an abundance of physical archaeology including ancient ground drawings in rocks, pictures written on rocks, ancient trails for religious pilgrimage, ceremonial purification areas, ancient prayer circles and other important, irreplaceable features. References in literature and documents dating back one hundred years speak to the cultural, historic and religious values of this area to the Tribe. Contrary to Glamis' unfounded testimony, the resources in this area are both spiritual and physical. Yet, Glamis sadly reiterates its unfounded arguments and opinions that were unpersuasive to BLM and Interior. Glamis asks the Subcommittee to endorse what others found irrelevant, that the presence of "burial areas" or "historical habitation" areas alone are what makes a site culturally significant. This is incorrect. (King, 1999 and 2000). First, the Quechan practice cremation, as instructed by their creator, and do not bury. Second, the Quechan historically were born, lived and died lightly on the land – there are few archaeological examples of Quechan habitation areas simply by the nature of their ancestor's lifestyle.

Perhaps most insulting to the Tribe, and doubtlessly to the Subcommittee's intelligence, is Glamis' repeated complaint that the only contentious issue was the impact on "alleged" Native American cultural and religious resources (Testimony, pgs. 4, 5). Glamis goes on to say that the Tribe "assert[s] that the land is of significant religious and cultural significance to their tribe based on the "vistas", "viewsheds" and the "setting, feeling and association" of the area." (Testimony, pg. 4). The speaker's liberal uses of quotes, juxtaposed with Glamis' mischaracterization of the Tribe's position, was undoubtedly designed to create the impression that these quotes were from the Tribe. The lack of direct citation is revealing. The cited text appears to somewhat track established National Register criteria. The speaker's apparent disdain for, and lack of understanding of, the National Historic Preservation Act Section 106 criteria and process should be an embarrassment. The "quotes" are Glamis' spin – not evidence submitted by the Tribe.

In fact, Glamis appears to be attributing to the Tribe passages from the Government's Record of Decision denying the mine. This mischaracterization attempts to minimize the extensive documentation placed into the project record by the Tribe -- documentation that was not easy for the Tribe to submit given their well-known and historic reluctance to openly discuss sacred matters. Glamis' testimony is an insult not just to the Tribe, but to all American Indian people. Furthermore, Glamis' counsel, who has been involved in this project for many years, is undoubtedly well-acquainted with this record, and his patent mischaracterization of the record could hardly have been unintentional.

Glamis' counsel next says that the Tribe has "admitted that the area has not been used for religious, cultural or other purposes for at least fifty years." (Testimony, pg. 4). To the contrary, and as the project record clearly and unequivocally relates, the site has been used for hundreds, if not thousands of years, and is used for ceremonial purposes today. In fact, Spirit Runs with youth, ceremonies and vision quests have been held in recent times. (*See, for example,* video "Honoring Kumat;" Coyle comment letter on FEIS, December 18, 2000). Further, BLM had already found Glamis' assertions to be unpersuasive in its ROD denying the mine. (Mine ROD, BLM Case File No. CA 670-41027, responses to comments, pg. 88).

Glamis further intentionally misleads the Subcommittee in stating, in essence, the only "recent use" of the area was General Patton's army training and mineral exploration (Testimony,

pg. 4). Once again, Glamis misstates the record. The area is regularly used by the public for recreation, hunting, archaeology classes, primitive camping, astronomy, botany, wildlife viewing and other passive uses. Glamis also claims that the area is "far from pristine." (Testimony, pg. 4). In reality, despite the use of this area, including by those who respect its value, the Indian Pass area retains much integrity: no buildings are in the area, no powerlines, no intrusive noises. The area is in a bowl, largely surrounded by mountains, with no notable intrusions. To the Quechan Tribe, and other Colorado River tribes, the area remains a holy area and must be treated with respect.

Glamis asserted to the Subcommittee that the mine would generate "substantial local economic benefit" to the County of Imperial. (Testimony, pg. 4). To the contrary, all the substantial evidence in the project's administrative record, including the environmental document itself, shows that the project, far from having substantial economic benefits, would in fact, offer *de minimus,* if any, economic benefits. (Power 2000). Chapter 6 of the mine's FEIS describes the economic impact of the Imperial Project in the following manner:

> The Project would produce few, if any, growth inducing effects . . . Project employment would not be of a size which would stimulate the development of additional growth of housing, schools, or other supporting infrastructure in either Imperial County, California or Yuma County, Arizona. Project expenditures, while substantial, would be spread between California, Arizona and other states, such that no significant economic stimulus to any individual economy would occur. (FEIS, page 6-3).

Thus, there are no economic benefits associated with this mine that would have justified incurring the extensive cultural and environmental damage the project would do. (Powers, 2000).

Finally, Glamis asserts that the project has "strong local support." (Testimony, Pg. 4). While the project may have had some local support, the project certainly has strong and widespread local opposition. Opposition to the mine included local environmental organizations, local labor, local American Indians, local academics, local archaeologists and other local public lands users. The vast majority of the one thousand public comment letters received on the two DEISs and the FEIS were in opposition to the mine. It would have been irresponsible to approve *this* mine in *this* location, with the environmental costs of the project so very great and the economic benefits so very small. Future recreation and other public use opportunities would have been permanently diminished and precluded, including an unbackfilled 880-foot deep hole adjacent to the Indian Pass Area of Critical Environmental Concern, two designated wilderness areas (Picacho Peak and Indian Pass) and critical habitat for the desert tortoise.

In sum, Glamis has, once again, shown its ignorance towards American Indian people in general and the Quechan people's history, culture and lifeways in particular. It appears that Glamis has learned nothing about the Quechan people even after "working with" the Tribe for several years. Glamis still does not know who the Quechan people are. The testimony provided by Glamis to your Subcommittee must be viewed with great skepticism and given little, if any, weight.

We thank you for considering our comments. We would be happy to discuss them further with you and the Subcommittee. We respectfully request to be kept informed of future hearings and actions on this subject of great importance to the Quechan people.

Very truly yours,

Courtney Ann Coyle
Attorney at Law

Encl. (1)

Cc: Rep. James Hansen, Chair, House Resources Committee
Rep. Nick Rahall, Ranking Minority Member, House Resources Committee
Deborah Lanzone, House Resources Committee, Democratic Legislative Staff

Senator Barbara Boxer
Senator Dianne Feinstein
Senator Jeff Bingaman, Chairman Senate Energy & Natural Resources Committee
Senator Daniel K. Inouye, Chairman Senate Committee on Indian Affairs
Senator James M. Jeffords, Chairman Senate Committee on Environment and Public Works
Senator Richard Durbin
Senator Joe Lieberman

BLM State Director Mike Pool
Mike Jackson, Sr., President Quechan Indian Tribe
Pauline Jose, Chair, Quechan Culture Committee

NEVADA MINERS AND PROSPECTORS ASSOCIATION

PO BOX 50300

RENO NV 89513

April 27, 2001

Congresswoman Barbara Cubin
Subcommittee on Energy and Mineral Resources
1324 Longworth House Office Building
Washington DC 20515

Re: Written comments—April 20, 2001, Reno Field Hearing

Dear Congresswoman Cubin,

I am President of the Nevada Miners and Prospectors Association, and I would like to provide some additional comments for your consideration. I attended the Field Hearing on April 20, which was chaired by our Congressman Jim Gibbons. Our Association had a meeting on the following Saturday, and we would like to make an additional statement for your consideration and for the record.

1. $100 BLM Maintenance Fee–Reduce the fee from $100 to $10 per claim. This high fee has literally stopped any claim staking and filing by our members. It is too high for the limited resources that we have for such activities, so we don't prospect any more.
2. Small Miners Exemption–We would like to see this eliminated because it is very confusing and several of our members have lost their claims due to misunderstandings with the BLM on appropriate assessment work. We would rather pay the money than lose our claims.
3. 3809 rules–Continue to review the 3809 rules and take into account the National Academy of Sciences recommendations. Please hold field hearings on any new changes recommended. Throw out the January 20 revisions that Clinton instituted.
4. National Mineral Policy–We recommend that you pursue a National Mineral Policy that would assure the country the minerals that will be needed in the future, secure self-sufficiency, and the well being for our children.

Thank you for allowing our organization the opportunity to comment on these very important issues.

Sincerely

/signed/

William Kohlmoos
President

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